



**STATE OF MARYLAND**  
**DEPARTMENT OF HEALTH**  
**DEVELOPMENTAL DISABILITIES ADMINISTRATION**  
**REQUEST FOR PROPOSALS (RFP)**  
**BEHAVIORAL RESPITE AND MOBILE CRISIS**  
**INTERVENTION SERVICES**  
**RFP NUMBER: MDH/OPASS 20-17375**

**ISSUE DATE: JULY 12, 2019**

**NOTICE**

A Prospective Offeror that has received this document from a source other than eMarylandMarketplace (eMM) <https://emaryland.buyspeed.com/bsol> should register on eMM. See **Section 4.2**.

**MINORITY BUSINESS ENTERPRISES ARE ENCOURAGED TO  
RESPOND TO THIS SOLICITATION.**

**VENDOR FEEDBACK FORM**

To help us improve the quality of State solicitations, and to make our procurement process more responsive and business friendly, please provide comments and suggestions regarding this solicitation. Please return your comments with your response. If you have chosen not to respond to this solicitation, please email or fax this completed form to the attention of the Procurement Officer (see Key Information Summary Sheet below for contact information).

**Title: BEHAVIORAL RESPITE AND MOBILE CRISIS INTERVENTION SERVICES  
Solicitation No: MDH/OPASS 20-17375:**

1. If you have chosen not to respond to this solicitation, please indicate the reason(s) below:
  - ☐ Other commitments preclude our participation at this time
  - ☐ The subject of the solicitation is not something we ordinarily provide
  - ☐ We are inexperienced in the work/commodities required
  - ☐ Specifications are unclear, too restrictive, etc. (Explain in REMARKS section)
  - ☐ The scope of work is beyond our present capacity
  - ☐ Doing business with the State is simply too complicated. (Explain in REMARKS section)
  - ☐ We cannot be competitive. (Explain in REMARKS section)
  - ☐ Time allotted for completion of the Proposal is insufficient
  - ☐ Start-up time is insufficient
  - ☐ Bonding/Insurance requirements are restrictive (Explain in REMARKS section)
  - ☐ Proposal requirements (other than specifications) are unreasonable or too risky (Explain in REMARKS section)
  - ☐ MBE or VSBE requirements (Explain in REMARKS section)
  - ☐ Prior State of Maryland contract experience was unprofitable or otherwise unsatisfactory. (Explain in REMARKS section)
  - ☐ Payment schedule too slow
  - ☐ Other: \_\_\_\_\_
2. If you have submitted a response to this solicitation, but wish to offer suggestions or express concerns, please use the REMARKS section below. (Attach additional pages as needed.)

**REMARKS:**

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Vendor Name: \_\_\_\_\_ Date: \_\_\_\_\_

Contact Person: \_\_\_\_\_ Phone (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

Address: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**STATE OF MARYLAND  
MARYLAND DEPARTMENT OF HEALTH  
RFP KEY INFORMATION SUMMARY SHEET**

<b>Request for Proposals</b>	Behavioral Respite and Mobile Crisis Intervention Services
<b>Solicitation Number:</b>	<b>20-17375</b>
<b>RFP Issue Date:</b>	July 12, 2019
<b>RFP Issuing Office:</b>	Maryland Department of Health (MDH) Developmental Disabilities Administration (DDA)
<b>Procurement Officer:</b>    <b>e-mail:</b> <b>Office Phone:</b>	Dana Dembrow, Director Office of Procurement and Support Services 201 W Preston Street, 4 <sup>th</sup> Floor Baltimore, Maryland 21201  <a href="mailto:mdh.solicitationquestions@maryland.gov">mdh.solicitationquestions@maryland.gov</a> 410-767-0974
<b>Contract Monitor:</b>	Patricia Sastoque, Director of Programs MDH – Developmental Disabilities Administration 201 West Preston Street, Baltimore, MD 21201 410-767-5567 email: <a href="mailto:patricia.sastoque@maryland.gov">patricia.sastoque@maryland.gov</a>
<b>Contract Officer:</b>	Afua Tisdale Office of Procurement and Support Services e-mail: <a href="mailto:mdh.solicitationquestions@maryland.gov">mdh.solicitationquestions@maryland.gov</a>
<b>Procurement Coordinator:</b>	Sherida Studwood <b>Fax:</b> (410) 767-6001
<b>Proposals are to be sent to:</b>	Maryland Department of Health Office of Procurement and Support Services 201 W Preston Street, Room 416 Baltimore, Maryland 21201 Attention: Dana Dembrow
<b>Pre-Proposal Conference:</b>	July 23, 2019 at 10:00 AM Local Time 201 West Preston Street, Room L3 Baltimore, MD 21201 See <b>Attachment A</b> for directions and instructions.
<b>Questions Due Date and Time</b>	August 9, 2019 @ 2:00 PM Local Time
<b>Proposal Due (Closing) Date and Time:</b>	August 20, 2019 @ 2:00 PM Local Time Offerors are reminded that a completed Feedback Form is requested if a no-bid decision is made (see <b>page iv</b> ).

<b>MBE Subcontracting Goal:</b>	3% with no subgoals.
<b>VSBE Subcontracting Goal:</b>	0%
<b>Contract Type:</b>	Indefinite quantity with firm fixed unit prices
<b>Contract Duration:</b>	Three (3) year base period with two (2) one-year option periods.
<b>Primary Place of Performance:</b>	At Contractor provided location(s) within each Region. See Section 2.2.2.1 for a description of the 4 DDA Regions.
<b>SBR Designation:</b>	<b>No</b>
<b>Federal Funding:</b>	<b>Yes</b>

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## **1 Minimum Qualifications**

### **1.1 Offeror Minimum Qualifications**

To be considered reasonably susceptible of being selected for award, the Offeror must document in its proposal that the following Minimum Qualifications requirements have been met.

- 1.1.1 The Offeror must be licensed by DDA as a provider of Residential Services.
- 1.1.2 The Offeror must be a Medicaid Provider or an entity which has filed an application to become a Medicaid Provider. (See COMAR 10.09.36.) If the Offeror is not an approved Medicaid Provider at the time of Proposal submission, Offeror must be approved as a Medicaid Provider at the time of recommendation for award.
- 1.1.3 The Offeror must NOT be on the Health and Human Services (HHS) Office of the Inspector General's List of Excluded Individuals and Entities (LEIE), or the federal General Services Administration System for Award Management (SAM) excluded parties list. Links to the LEIE and SAM lists are as follows:
  - a. LEIE: Go here: [http://oig.hhs.gov/exclusions/exclusions\\_list.asp](http://oig.hhs.gov/exclusions/exclusions_list.asp)
  - b. SAM: Go here: <https://www.sam.gov/SAM/> Please note: Effective June 2017, you cannot access the System for Award Management (SAM) using Internet Explorer (IE) Versions, older than IE11. You either need to upgrade to an Internet Explorer version of IE11 or higher, or access SAM with another supported browser type (Chrome, Firefox, Safari, etc.) In the event any vendor is unable to access the referenced information using either of these websites, it should perform a web search using the above provided names of the federal organizations and lists.

### **1.2 Required Documentation**

As proof of meeting the requirements in Section 1.1, the Offeror shall provide the following with its Proposal.

- 1.2.1 A copy of its Residential Services license.
- 1.2.2 Documentation that the Offeror is an approved Medicaid Provider or has applied to become an approved Medicaid Provider. If the Offeror is not an approved Medical Provider at the time of Proposal submission, it must provide documentation that it is approved prior to Contract award.
- 1.2.3 A self-certification that it is not on the LEIE list or is not on the SAM excluded parties list.

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## 2 Contractor Requirements: Scope of Work

### 2.1 Summary Statement

- 2.1.1 The Maryland Department of Health (MDH or the Department) is issuing this Request for Proposals (RFP) in order to contract for comprehensive Behavioral Respite (BR) and Mobile Crisis Intervention (MCI) Services. These services are for people identified by the Developmental Disabilities Administration (DDA) as eligible for DDA services and to prevent the need for hospitalization.
- 2.1.2 It is the Department's intention to obtain services, as specified in this RFP, from a Contract between the selected Offeror(s) and the State.
- 2.1.3 The Department intends to make one (1) award per Region (see Appendix 1 definition) as a result of this RFP. Accordingly, a selected Offeror must provide all required Behavioral Respite Services, and all required Mobile Crisis Intervention Services within its awarded Region(s). Offerors may propose on one (1) or more Regions, up to all four (4) Regions, but may only submit (1) proposal for each Region. See **RFP Section 4.9 Award Basis** for more Contract award information.
- 2.1.4 An Offeror, either directly or through its subcontractor(s), must be able to provide all services and meet all of the requirements requested in this solicitation. The successful Offeror (the Contractor) is responsible for Contract performance regardless of subcontractor participation in the work.
- 2.1.5 A Contract award does not ensure a Contractor will receive all or any State business under the Contract.

### 2.2 Background and Purpose

#### 2.2.1 Purpose

The DDA provides a coordinated service delivery system so that individuals with developmental disabilities receive appropriate services oriented toward the goal of integration into the community. These services are provided through a wide array of community-based services delivered primarily through a network of non-profit providers, as well as the two State Residential Centers (SRC) (Potomac Center in Hagerstown, Maryland and Holly Center in Salisbury, Maryland) that provide services to individuals with intellectual disability. DDA's mission is to partner with people with developmental disabilities to provide them leadership and resources to live fulfilling lives.

#### 2.2.2 Background

- 2.2.2.1 This RFP is a re-procurement with a revised scope of work. The previous RFP issued on December 21, 2016 under Solicitation # OPASS 17-17375, was cancelled due to insufficient response. The revised scope adds components to both BR and MCI services.
- 2.2.2.2 The DDA has four (4) Regional offices that oversee services through separate contracts in each Region. The current services provided by DDA are broad and administered differently in each Region. The Regions are identified below and fully described in Appendix 1.
  - a. Central Maryland Region (CMR)
  - b. Eastern Shore Region (ESR)
  - c. Southern Maryland Region (SMR)
  - d. Western Maryland Region (WMR)

2.2.2.3 The following chart provides the most recent data on the number of DDA funded Mobile Crisis and Behavioral Respite Services provided per Region.

<b>FY 2018</b>		
<b>DDA REGION</b>	<b>MOBILE CRISIS SERVICES</b>	<b>BEHAVIORAL RESPITE SERVICES</b>
CMR	304	1044
ESR	30	138
SMR	210	779
WMR	43	239
<b>TOTAL ALL REGIONS</b>	<b>587</b>	<b>2200</b>

**2.2.2.4** Behavioral Respite Service is available for eligible non-residents of the State Residential Centers when parents and guardians need relief from the care of the individual due to challenging behaviors that cannot be managed within a home environment. Responsible, temporary care may be provided at the State Residential Centers if deemed clinically appropriate to meet these requests for up to the time limits described in Section 2.3.2.1.B. A Contractor will not be paid for any services provided at an SRC or any BRS activities it performed that led to the admission of an individual to an SRC, unless that activity constitutes a BRS Billable Interval, as defined in Appendix 1.

2.2.2.5 Further information about DDA programs and services can be accessed via the website at: <https://dda.health.maryland.gov/Pages/home.aspx>

## **2.3 Responsibilities and Tasks**

### **2.3.1 General Contract Requirements**

The Contractor must:

- 2.3.1.1 Provide at a minimum the Key Personnel and other staff as set out in Section 3.10.2, 3.10.3 and 3.10.4.
- 2.3.1.2 Ensure that all staff working under the Contract are trained for their job duties per DDA regulations regarding required trainings. The Contractor must have a training log for each staff member (including contractual staff), that demonstrates their successful completion of required training and any additional staff training they have attended. "Required training" is any training required by law or regulation for a given position or function or otherwise committed to by the Contractor in its Technical Proposal. Staff training must be included as part of the required Quarterly Report. (See Section 2.5.1.3.2.)
- 2.3.1.3 Evaluate the on-the-job performance of its staff at least on a quarterly basis. Such evaluations shall be conducted as described in its Technical Proposal or as otherwise approved in writing by the Contract Monitor.
- 2.3.1.4 Submit to the Contract Monitor its proposed quarterly and annual report formats no later than 15 calendar days after the NTP Date. The Contractor must make any changes required by the Contract Monitor no later than 3 Business Days after receiving notification of the Contract Monitor's required changes.

- 2.3.1.5 Provide all required services to individuals who are not fluent in the English language or who have visual or hearing impairments. The State maintains contracts for foreign language and sign language interpretation. If the Contractor chooses to utilize the State contracts for services, telephonic language interpretation services are provided by the Regional office through conference calling procedures. On-site interpretation services require twenty-four (24) hour notice to the Contract Monitor and/or Regional office and are subject to availability. If the Contractor chooses to provide for its own interpretation services, it will be at its own cost.

## **2.3.2 Behavioral Respite Services**

### **2.3.2.1 BRS Description and Background Information**

- A. Behavioral Respite Services (BRS) is a temporary relief service, provided to the family or caregiver of an individual who is exhibiting challenging behavior. BRS can help families meet emergency needs and/or fulfill vacation plans or overcome the challenging behavior that is preventing the individual from living in a less restrictive environment. BRS involves transferring an individual from their current living environment to a more highly structured and positive environment for a time-limited period where their challenging behavior(s) can be managed in a positive, safe, and effective manner. Changing the individual's environment is part of the therapeutic intervention needed to improve the situation. These services must be authorized by DDA as part of a planned, coordinated, step-wise approach to address challenging behaviors and return the individual to less restrictive community living arrangement
- B. The Regional Office and the Contract Monitor will pre-authorize the provision of BRS for a maximum of 28 calendar days, pending the completion by the Contractor of an eligibility determination (see Section 2.3.2 D), within ten (10) Business Days of the initial referral. BRS for an individual must not exceed 45 calendar days within a one-year period and must not be provided for more than 28 consecutive calendar days unless prior written approval is granted by the Regional Office or the Contract Monitor. (COMAR 10.22.08.03E.2) See sample Behavioral Respite Request Form (Attachment R).
- C. An individual being able to remain in the community while receiving increased support is essential. It allows the individual to continue to live their life, including going to work, meeting with their outpatient providers, attending day services, and spending time with family and friends when clinically appropriate, all while receiving counseling, BSS, and 24-hour support.
- D. 1. Access to these services is contingent upon referral through DDA and verification that this individual has been determined by DDA to be eligible for DDA funding, as well as confirmation by the Contractor of the presence of challenging behaviors or co-occurring mental health issues that cannot be adequately addressed in the current community setting. BRS services are an all-inclusive service (i.e., room, board, staffing as clinically indicated, administrative/clinical supervision, documentation, nursing assessments, nursing, care coordination, assistive technology, behavioral support services, family support, personal supports, transition services, discharge planning, reporting, transportation, preparing weekly data collection reports, etc.) When looking at transitioning an individual out of

Behavioral Respite Services and back into the community, the Contractor must ensure that waiver services are reviewed and that the individual is connected with said services.

2. An individual will not be admitted into Behavioral Respite Service until a Behavior Assessment has been completed for the individual, unless otherwise authorized by the DDA (see Attachment P “Behavior Assessment”). Typically, a Behavioral Assessment will have been completed for an individual being referred for BRS by that individual’s provider of residential and/or other services, possibly including the Contractor since Offerors must be a DDA residential services provider to be eligible for the award of the Contract. In other instances, a Behavioral Assessment might be performed by a DDA approved BSS provider through the Community Pathways Waiver, Community Supports Waiver or Family Supports Waiver. However, the Contractor may not perform a Behavioral Assessment of an individual under this Contract, either as part of BRS or MCIS.

3. The Behavioral Assessment will include the level(s) of support that the individual will require (i.e. Tier 1, Tier 2, or Tier 3 as described in Attachment P). The Assessment will also include the initial staffing ratio that the individual will require (i.e. one to one, two to one etc.) and any projected Step-Down (reduction) in that ratio while receiving Behavioral Respite Services. The recommended staff ratio must be provided by the Contractor. The Behavior Assessment will also include specific recommendations for other required staff (i.e. qualified clinician) needed to train Behavioral Respite agency staff and implement a Behavior Plan (BP) or other recommended levels of support (Tier 1, Tier 2).

- E. Behavioral Respite Services are not a substitute for psychiatric admission or for Non-Behavioral Respite; however, they can be used as a transitional environment from a psychiatric admission. The goal of Behavioral Respite Services is to stabilize behaviorally so that the individual may return to a less restrictive community living environment. If the determination of the Contractor is that a psychiatric admission for an individual is appropriate, the Contractor must help to arrange that admission. Moreover, unless the Contractor’s activities in this regard satisfy the requirements of a Behavioral Respite Services Billable Interval, the Contractor may not invoice for any of its efforts leading to a psychiatric admission.

### **2.3.2.2 Behavioral Respite Services Requirements**

#### **2.3.2.2.1 General BRS Requirements**

The Contractor must:

- A Develop and maintain relationships with community mental health providers, such as local health departments and hospitals, to support and assist for a Step-Down of care if an individual is ready to be released from an institutional, restrictive environment or for increased care if Behavioral Respite Services do not meet the psychiatric or behavioral needs of the individual.
- B. Provide Behavioral Respite Services for children and adults in separate locations unless approved otherwise by the Deputy Secretary for Developmental Disabilities of MDH.
- C. Provide Behavioral Respite Services in a setting capable of meeting the requirements of individuals with challenging behaviors. BR settings must be a

highly structured environment located within the contracted Region, with staff specifically trained to work with individuals with challenging behaviors through the use of Positive Behavior Supports and Trauma Informed Care.

**2.3.2.2.2 Location and Capacity Requirements**

The Contractor must:

- A. For the full duration of the Contract be a licensed DDA Residential Services provider (see Section 1.1.1).
- B. Have one (1) or more locations within each of its contracted Regions to provide residential services in compliance with all licensure requirements for individuals accepted into BRS, in addition to whatever services are required to provide BR. This/these location(s) may be provided by the Contractor:
  - 1. Directly through a residential setting(s) it owns, rents or leases;
  - 2. Indirectly through a residential setting(s) owned, rented or leased by a subcontractor; or
  - 3. A combination of items 2.3.2.2.2 B. 1 and 2.

Staff providing services at any residential setting location provided under this Contract may be employees or agents of the Contractor, or a subcontractor, or a combination thereof, as long as any and all such staff possess all licenses, certificates, experience, skills, and abilities required to properly perform their assigned duties.

- C. Have and maintain the capacity within each Region it is contracted to serve to simultaneously provide BRS in an approved residential setting and with all associated services for at least the following number of individuals:

Central Region – four (4);

Southern Region – three (3);

Western Region – two (2); and

Eastern Region – two (2).

Maintaining capacity means that unless the Contractor is already serving the required or committed-to number of individuals in BRS within each contracted Region(s), it must accept any eligible individual into BRS, including providing all activities, facilities, and supports needed for residential services for the rate quoted on the Financial Proposal Form for each respective Contract period.

- D. If a Contractor committed in its Technical Proposals to have the capability to serve more than the number of individuals for a Region(s), listed in Section 2.3.2.2.2. C, for the full duration of the Contract it must simultaneously accept and serve that higher number if and when required.
- E. In the event that more individuals are simultaneously approved into BRS within a given Region than the Contractor for that Region is required to, or committed in its Technical Proposal to serve, to the extent that Contractor can accept and properly serve additional individuals, for each additional



individual served the Contractor will be paid the rate it quoted on the Financial Proposal Form for each respective Contract period.

**2.3.2.2.3 Requirements for Assessing the Need for BRS**

The Contractor must:

- A. Ensure that one of the following two (2) criteria is met in order to justify a referral for Behavioral Respite Services:
  - 1. The individual must be exhibiting a pattern of accelerating challenging behaviors resulting in serious multiple injuries (defined as three (3) or more incidents requiring medical treatment) to themselves or others during the past 21 days, and/or
  - 2. The individual must have exhibited an increase in the frequency and intensity of challenging behaviors in the past 21 days to the magnitude that the safety of the individual and others cannot be assured unless the individual is removed from the current residential setting and placed in Behavioral Respite, in order to mitigate the behavior crisis.
- B. Provide written documentation (i.e. incident reports, behavioral data analysis, medical records, etc.) to the Regional Director or designee prior to admitting an individual to Behavioral Respite Services. Contractor must clearly indicate that one or both criteria listed in Section 2.3.2.2.3. A have been met. Approval to begin Behavioral Respite Services will be made in writing by the Regional Director or designee.
- C. Contact its counterpart contractors in the other three Regions to arrange BRS to be provided outside the consumer's home Region if the Contractor is already serving the number of individuals required by Section 2.3.2.2.2.C for its Region or as committed-to in its Technical Proposal (see 2.3.2.2.2.D) and does not have the physical capacity to provide BRS to another eligible consumer from within the Region it is contracted to serve.
  - 1. The determination of whether the Contractor has the physical capacity to provide services should be made before the Contractor exerts any effort to ascertain the eligibility of a consumer to receive BRS.
  - 2. Except for highly extenuating circumstances that must be approved in advance by the Contract Monitor, the Contractor must not decline to provide services to any consumer based upon a lack of clinical capability.
  - 3. Initial contact should be made to the BRS contractor serving the Region closest to the consumer's current residence. If that Contractor lacks capacity to serve the consumer, contact should be made to the other Regional BRS contractors to determine if another Contractor can provide the needed BRS services.
  - 4. The Contractor that actually provides the BRS services for a given consumer will be paid for providing the services at the rate in its contract.

- D. Have a State of Maryland licensed health occupation professional perform a face-to-face on-site evaluation of the individual in their current environment (residential, home, hospital).

**2.3.2.2.4 Prior to Placement in Behavioral Respite**

The Contractor must identify and submit in writing to the Coordinator of Community Services and Regional Office Staff, a request for the information needed during the individual's stay. This will include but is not limited to the following: Behavior Plan, Individual Person-Centered Plan, nursing care plan, and medical appointment schedule. Contact information for the Coordinator of Community Services and Regional Office Staff will be provided to the Contractor upon Contract award.

**2.3.2.2.5 Once an Individual Is Receiving Behavioral Respite Service**

As part of its all-inclusive rate as proposed on **Attachment B, the Financial Proposal Form**, the Contractor must:

- A. Develop a written treatment plan, within 24-hours of admission, based upon Positive Behavior Supports, specifically for the Behavioral Respite Services stay. The treatment plan will detail specific outcomes that are measurable and observable through the objectives that support the overarching outcome. The treatment plan must be reviewed at least weekly and updated as appropriate. The updated treatment plan must then be added to the Contractor On-line Information Database as described in Section 2.4.
- B. Develop a written transition plan, within 48-hours of admission, to coordinate services from Behavioral Respite Services to the individual's permanent residential setting. The transition plan must be reviewed at least weekly and updated as appropriate. The updated transition plan must then be added to the Contractor On-line Information Database as described in Section 2.4.
- C. Support the individual to continue to live their life, including going to work, meeting with their outpatient providers, attending employment or day services, and spending time with family and friends.
- D. Provide services daily to assist with skills building (i.e., self-care/Activities of Daily Living (ADLs), and independent living skills) and conduct daily therapeutic groups and activities (i.e., self-esteem building, wellness groups, appropriate self-expression, problem solving, coping skills/relaxation strategies, and recreational, social, and leisure activities).
- E. Work with the individual and their system of supports and services in order to problem solve, reduce the frequency of needed emergency interventions, and assist with ongoing stability.
- F. Assess whether changing the individual's environment is part of the therapeutic intervention needed to improve the situation. This is a temporary, time-limited placement that provides all of the resources needed, including,



but not limited to, staffing and Positive Behavioral Supports to meet the identified needs.

- G. Within the first five (5) calendar days of Behavioral Respite Services, arrange and participate in an Individual Planning Team meeting, including the Coordinator of Community Services as applicable, to develop a plan for long-term services. This plan will be implemented using the agreed upon format or BRS that is developed by the Contractor and approved by the Contract Monitor. This may include DDA-funded services if DDA has deemed the individual cannot return to the previous living situation and there is no other non-DDA funded option.
- H. Develop a staffing level Fading Plan based upon the individual's health/self-care and challenging behavior needs. The Fading Plan must be completed on a weekly basis (see Section 2.5.1.1 on Weekly Reports) and is due to the Contract Monitor before 12:00 noon on Tuesdays, even if the individual started receiving BRS as recently as the day before, or even that Tuesday morning. The Fading Plan must include but is not limited to criteria for:
  - 1) Expanding or generalizing Fading to relevant times and or places; and
  - 2) Abandoning the Fading Plan or going back one step.
- I. Train all staff and family working with the individual in Behavioral Respite Services on all aspects of the individual's BP, including the data collection procedures.
- J. Provide a Weekly Behavior Respite Services Report (see Section 2.5.1), to the Contract Monitor about the individual's progress and efforts undertaken to return the individual to the community (see Attachment Q), including:
  - 1. All relevant information about the individual for a successful transition back to the receiving agency is to be documented.
  - 2. Behavioral data (frequency, duration, and intensity/severity) for all targeted challenging behaviors on an ongoing basis 24/7 as long as the individual is receiving Behavioral Respite Services. This data will be graphed (with a written trend analysis for each maladaptive behavior) and provided to the Contract Monitor in the Behavioral Respite Services portion of the required Weekly Report.
  - 3. Weekly updates to the Contract Monitor about the individual's progress and undertaking being done to return the individual to the community. These reports are due to the Contract Monitor by 12:00 noon on Tuesdays regardless of the date of admission. (See Section 2.5.1.1)

### **2.3.3 Mobile Crisis Intervention Services (MCIS)**

Mobile Crisis Intervention Services (MCIS) should be used in response to a behavioral, acute psychiatric, or situational emergency that may result or has resulted in a harmful or potentially harmful outcome to an individual who has been found eligible for DDA services and is currently receiving DDA services, unless otherwise authorized by the DDA. The Contractor's MCIS

Staff/Consultants must address urgent requests from community caregivers, community providers, or other community settings by providing crisis intervention services through on-site assessment in an attempt to de-escalate presenting behaviors or provide clinical input to guide community placement decisions from a hospital or facility. The goal for these services is to reduce harm to self or others, minimize emergency hospital admissions, limit potential police/legal involvement, and facilitate placement at the appropriate level of support.

### **2.3.3.1 Requirements and Referral Process**

#### **2.3.3.1.1 Prior to Providing Crisis Response Services**

The Contractor must:

- A. Provide and maintain telephone support, 24 hours per day, 7 days per week by trained crisis intervention staff to accept referrals for MCIS.
  1. A request for MCIS support shall be initiated via a phone call or text message to one or more telephone numbers publicized by the Contractor for that purpose. Any request for Crisis Response shall be answered/responded to by appropriate staff as follows:
    - a. If answered by a live person, within 1 minute.
    - b. If to a recording device or text message, a return call or text within 5 minutes.
  2. No less than 20 days prior to the NTP Date, submit to the Contract Monitor all final details of how it will respond to MCIS requests. At a minimum, this information must include:
    - a. Actual phone numbers that will be used.
    - b. The names, titles, and qualifications of personnel (Crisis Intervention Team) who will answer/respond to these requests and how it will be assured that the above specified time frames will be met.
    - c. How the contact numbers and all necessary contact information will be publicized to local police and existing emergency treatment teams within its service Region(s), both prior to the NTP Date and throughout the term of the Contract.
  3. No less than 3 days prior to the NTP Date, provide the Contract Monitor with a final listing of the entities to whom the contact information was provided, which shall include the name, address, phone number, and email address of each person provided with the Crisis Intervention Team contact information.
- B. Develop and maintain relationships with community mental health providers, such as local health departments and hospitals, to support and facilitate hospital evaluations when needed.
- C. No less than 20 days prior to the NTP Date, submit a Crisis Behavioral Assessment instrument (protocol, format, process, etc.) to the Contract Monitor for approval for use during the Contract. The Contractor must implement any changes required by the Contract Monitor within 3 Business Days of receiving the Contract Monitor's direction.

### 2.3.3.1.2 When Responding to a Request for Crisis Services

- A. Confirm to see if the individual is currently in one of the three DDA waivers and receiving Behavioral Support Services (BSS).
- B. Respond in person to MCIS calls within one to three hours to provide expedited **on-site** evaluation and consultation. The licensed clinician from the MCIS team must conduct the crisis assessment and development of recommendations.
  1. In extreme weather situations (e.g., flooding, blizzards, hurricane, derecho) or other circumstances such as civil disturbances, terrorist activity, police or fire-fighting actions, or road closures, a three hour respond time may not be possible.
  2. In any such situation the Contractor must:
    - a. Notify the requesting entity, and if possible appropriate personnel from the involved DDA Regional Office, that it will be delayed in responding, along with an estimated response timeframe if appropriate.
    - b. Provide any appropriate remote assessment of the crisis situation and recommendation for de-escalation.
  3. Within three hours after the situation which prevented the timely on-site response has ended, unless clearly inappropriate, qualified Contractor staff shall still respond on-site to the crisis location to provide an appropriate, in-person assessment and resolution guidance.
- C. If appropriate Contractor clinical staff determines that a Targeted Therapeutic Staff (TTS) (see Section 2.3.3.2) should stay with a caregiver as a strategy to reduce the possibility of an emergency room visit after a MCIS call, permission to assign a Behavioral Tech should be requested from the involved Regional Office. Upon approval by the Regional Director or designee, a TTS may be provided, subject to any conditions or duration limitations that may have been described with the approval.
- D. Coordinate services with locally based emergency departments, psychiatric units, acute care hospitals, state psychiatric hospitals, DDA-licensed providers, core services agencies, and other locally-based human service and generic agencies.
  - 1) Confirm if individual currently has waiver services and if they are already receiving Behavioral Support Services. If they are receiving BSS, then upon completion of the Crisis Behavioral Assessment, communicate with the current Behavioral Consultant the findings from the Assessment and discuss further clinical needs. If the individual is not receiving BSS and it is assessed that they are in need of said services, contact the Regional Office to begin the process of BSS approval.
  - 2) Using the Crisis Behavioral Assessment instrument described in 2.3.3.1.1 C, complete an assessment of the individual's behaviors and environment. The Crisis Behavioral Assessment must be completed and forwarded to the Contract Monitor within 24 hours of the intervention to resolve the immediate crisis, and must include:
    - a. The development of preliminary individualized recommendations/strategies/next steps for the primary caregiver to follow;
    - b. Recommendations for long-term resolution of identified challenges; and,

- c. Recommendations to update an existing BP or support the development of a new BP.
- E. Provide copies of all Assessments/summaries to the individual in crisis and as appropriate:
  - 1) The individual's family member or primary caregiver;
  - 2) Provider agency staff;
  - 3) Staff at the emergency department; and
  - 4) Other involved team members.
- F. Upload all completed Crisis Behavioral Assessments to the appropriate Regional Office electronic mail address within 24 hours after the crisis intervention was initiated (i.e., at the same time as the Assessment is submitted to the Contract Monitor), such that they are easily searchable by Region, activity, and individual. The email address will be provided by the Contract Monitor upon Contract award.

#### **2.3.3.2 Targeted Therapeutic Staff (TTS)**

As outlined in COMAR 10.22.10.03, Behavioral Support Services include the provision of temporary augmentation of staff. This service will be titled Targeted Therapeutic Staff and will provide for this temporary augmentation of staff specifically in a General Hospital Behavioral Unit or Psychiatric Unit. The goal of TTS is to provide additional, time-limited direct support to a person who has been admitted to a General Hospital Behavioral or Psychiatric Unit and is preparing for discharge back to their provider or family. Concerning TTS, the Contractor must:

- A. Develop procedures for delivering temporary TTS that are individualized, timely and flexible. These procedures must be submitted to and approved by the Contract Monitor no less than 2 weeks prior to the NTP Date.
- B. Develop a pool of specially trained staff who will be available on short notice to provide Targeted Therapeutic Staff (TTS) services
- C. Assure that TTS work collaboratively with the individual and their community team along with clinical and hospital staff to develop a successful discharge plan and a smooth transition back to their community setting.
- D. Provide TTS services in conjunction with Behavioral Assessment and Support Services and provide training and modeling of behavioral interventions within the Behavior Plan
- E. TTS services may not be used to improve on-going staff/individual ratios, nor may it be offered to be a substitute for or provided in the absence of assigned caregiver(s)/agency staff.

## **2.4 Contractor On-line Information Database**

- 2.4.1 The Contractor must establish some type of secure, internet accessible document management database that authorized Department personnel can access on a read-only basis 24 hours a day, 7 days a week via a password or other form of access restriction.

- 2.4.2 This on-line database must:
- A. Be established in a commonly available software program such as Word, Access, or Excel or combinations of these.
  - B. Permanently record all persons who make entries by name, date, and time.
  - C. Not permit the erasure or alteration of any entry once it has been saved.
  - D. Record the date and time that all reports or plans listed in Section 2.5 are entered.
  - E. Have a tickler component that provides automatic notification to both the Contract Monitor and the Contractor Contract Manager if any plan or report listed in Section 2.5 is not completed and entered in the database within the required timeframe.
  - F. Be submitted for approval by the Contract Monitor no less than 20 calendar days prior to the NTP Date.
  - G. Be revised within 5 Business Days to conform to any changes directed by the Contract Monitor.
  - H. Be fully operational within 5 calendar days after the NTP Date.
- 2.4.3 This on-line database must contain all plans, assessments, progress notes, and other documents that pertain to any individual that receives any services under the Contract. Any such document must be entered into this database within 5 calendar days of when the document is created.
- 2.4.4 All database documents must be easily searchable by:
- A. Region
  - B. Individual
  - C. Activity Type
  - D. Time Period (i.e., all activities performed between 2 specified dates.)

## **2.5 Reports and Plans**

### **2.5.1 Periodic Summarizing Reports**

#### **2.5.1.1 Weekly Report**

2.5.1.1.1 Every Tuesday by 12:00 noon, the Contractor is to submit a report to the Contract Monitor of all Contract activities completed since the previous Weekly Report. This Weekly Report shall be segmented into Behavioral Respite Services and Mobile Crisis Intervention Services sections. Within each of these sections (BRS and MCIS), Contract activities are to be reported under the name of the individual(s) that received the services. In addition, each Contract activity being reported is to include the date it occurred and the duration of the occurrence, including, if applicable, the actual or approximate times the activity started and stopped. Of necessity, the report information for an individual who was accepted into services shortly prior to 12:00 noon on a Tuesday – e.g. that Tuesday morning or the day before – may only have a bare minimum of projected treatment information, but it must at least fully identify the individual with the information described in 2.5.1.1.2 and the authorized treatment duration.

2.5.1.1.2 Each individual receiving services shall be identified by first and last name, Medical Assistance Number, if applicable, and other appropriate identification information.

2.5.1.1.3 Along with services (treatment) information, the Weekly Report must have a detailed financial component. This financial component must include:

- A. The total amount of all payments received under the Contract, both for the Contract year to-date and the total Contract to-date.
- B. The total amount of any invoices that have been submitted to the Contract Monitor but for which payment has not yet been received.
- C. The projected total value (amount) of the Contract if all in-place or projected services are provided as planned. E.g., if an individual is accepted into a 28 day treatment program, but has only been receiving services for five days as of a given Weekly Report date, the financial reporting for this individual would note the value of the five days of incurred, but not yet invoiced services and the maximum billable amount for the individual if the authorized 28 days of services are realized. This detailed financial information is required to help ensure that the not-to-exceed value of the Contract is not exceeded
- D. If at any point in time it appears the total value of the Contract will or might exceed the not-to-exceed Contract limit, the Contractor must highlight this circumstance on the report and separately directly so inform the Contract Monitor. Based upon this financial information, the Department will decide whether to seek to increase the not-to-exceed value of the Contract, curtail future usage of the Contract, or prematurely require the termination of services to one or more individuals, or some combination of these actions.
- E. If the Contractor fails to properly report and/or calculate the projected total value of the Contract with the result that the not-to-exceed value of the Contract is reached or would be reached when all performed services are invoiced, invoices cannot be processed unless and until the not-to-exceed value of the Contract is increased via a Contract modification that receives all required State approvals.

2.5.1.1.4 If any Tuesday is a State observed holiday or State offices are otherwise closed at 12:00 noon on that day – e.g. due to a weather or national emergency, death of State dignitary, terrorist activity – the weekly Report is due by noon on the next State Business Day.

## **2.5.1.2 Monthly Reports**

- 2.5.1.2.1 If any Quarterly Assurance Report described in Section 2.5.1.3.2 shows that the Contractor did not satisfy all Contract requirements being reported in that Section, for the next quarter the Contractor shall report on all elements contained in Section 2.5.1.3.2 **monthly**.
- 2.5.1.2.2 These monthly reports will be due no later than 10 days following the end of each month being reported.
- 2.5.1.2.3 If any monthly report as described in this Section shows that all Contract requirements as described in Section 2.5.1.3.2 were not met, the Contractor must continue to submit these reports monthly.
- 2.5.1.2.4 If any monthly report as described in this Section shows that all Contract requirements as described in Section 2.5.1.3.2 were not met, in addition to the continuation of monthly reporting, the Contract Monitor typically will also require a new or revised Corrective Action Plan, as described in Section 2.5.1.6.

- 2.5.1.2.5 If all 3 monthly reports for a given Contract quarter show the Contractor met all Contract requirements, the Contractor may revert to quarterly reporting as described in Section 2.5.1.3.2.

### **2.5.1.3 Quarterly Reports**

#### **2.5.1.3.1 Submission Timeframes**

2.5.1.3.1.1 For the entire Contract Duration, the Contractor is to submit Quarterly Reports to the Contract Monitor by the 15th calendar day after the end of each quarter (each 3-month period of the Contract, starting on the NTP Date); e.g., the Contractor is to submit the 1<sup>st</sup> quarterly report by the middle of the 4<sup>th</sup> month of the Contract, the 2<sup>nd</sup> quarterly report by the middle of the 7<sup>th</sup> month of the Contract, the 3<sup>rd</sup> quarterly report by the middle of the 10<sup>th</sup> month of the Contract, and the 4<sup>th</sup> quarterly report by the middle of the 13<sup>th</sup> month of the Contract (1st month of the 2<sup>nd</sup> Contract year.)

2.5.1.3.1.2 For the last year of the Contract, the final Quarterly Reports must be submitted to the Contract Monitor no later than when a final invoice is submitted.

#### **2.5.1.3.2 Types of Quarterly Reports**

2.5.1.3.2.1 **Training and Performance Report.** This Quarterly report must include information on staff training and on-the-job performance evaluations of staff as described in Sections 2.3.1.2 and 2.3.1.3.

2.5.1.3.2.2 **Quality Assurance Report.** This quarterly report must address the extent to which the Contractor met each of the following requirements for **each individual** that received BRS during the preceding quarter.

- a. A Behavior Assessment (BA) was completed for each individual accepted into Behavioral Respite (BR) **before** that individual entered BR. (See Section 2.3.2.D.)
- b. A Behavior Plan was agreed to by the Individual Planning Team, and in place within five days of each individual entering BR. (See Section 2.3.2.2.5.G.)
- c. A graphic representation of sleep and target behaviors for each maladaptive behavior for each respective individual was provided to the Contract Monitor in Weekly Reports for each week or portion thereof that an individual was receiving BRS. (See Sections 2.3.2.2.5.J and 2.5.1.1.)
- d. A description of contact between the Contractor and each individual's Individual Planning Team regarding progress towards the individual transitioning out of BR was provided to the Contract Monitor in weekly reports for each week or portion thereof that an individual was receiving BRS. (See Sections 2.3.2.2.5. J and 2.5.1.1)
- e. All relevant information about the individual for a successful transition back to the receiving agency was documented in a Weekly Report no later



than the Tuesday following when the information first became available. (i.e., when an event or action occurred, a meeting or discussion was held, etc. (See Sections 2.3.2.2.5.J and 2.5.1.1.))

**2.5.1.4 Annual Reports.** The Contractor must provide an annual report to the Contract Monitor by the last day of the month following the last month of each Contract year. (e.g., by July 31<sup>st</sup> of each year of the Contract if the Contract starts on July 1<sup>st</sup> the year before.). For the last year of the Contract this annual report must be received before final Contract payment will be made. This report must provide:

- a. A detailed summary of all services provided during the year;
- b. An analysis of the results of the services; and
- c. Recommendations the Contractor has for improving the efficiency and quality of services being delivered.

**2.5.1.5 Other Reports.** Any other information the Contractor committed to provide in its Technical Proposal and any additional information agreed to by the Contractor and Contract Monitor shall be submitted by the Contractor in the agreed timeframe and manner.

**2.5.1.6 Corrective Action Plan**

2.5.1.6.1 If any Quarterly Assurance Report described in Section 2.5.1.3.2 shows that the Contractor did not satisfy all Contract requirements being reported in that Section, in addition to changing to monthly reporting on those requirements as described in Section 2.5.1.2, the Contractor shall also submit a Corrective Action Plan (CAP), describing all actions it will take to ensure that all these requirements will be satisfied thereafter. This CAP must be submitted to the Contract Monitor for approval within 15 days of the submission of a quarterly report showing such deficiencies.

2.5.1.6.2 If the Contract Monitor is not satisfied that the Contractor's proposed Corrective Action Plan will prevent a recurrence of the deficiency(ies), the Contract Monitor will so notify the Contractor and require a revised CAP. The revised CAP must be submitted to the Contract Monitor within 10 days of the Contract Monitor's rejection of the previous CAP.

**2.5.2 Time Specified Plans or Reporting.** As detailed in Section 2.3, various assessments, plans, updates, etc. are required within certain timeframes from the NTP Date, admission of an individual into services, or the occurrence of a specific circumstance. For convenience in ascertaining these timeframes, many of these types of reporting are summarized herein. However, the lack of inclusion of any activity in this summary section does not relieve the Contractor from complying with the requirement stated in Section 2.3.

**2.5.2.1 Mobile Crisis Emergency Reporting.** Twice each Contract year, at approximately six-month intervals, the Contractor must provide an updated list of the entities (police departments, etc.) that have been provided with contact information for the Contractor's Crisis Intervention Team. In the first year of the Contract, aside from prior to the NTP Date as described in 2.3.3.1.1.A.2 and 3, this information is only due to the Contract Monitor between the middle of the 6<sup>th</sup> month of the Contract and the middle of the 7<sup>th</sup> Contract month. In the remaining years of the Contract this information is due to the



Contract Monitor no later than the start of the 2<sup>nd</sup> month of the Contract year and again between the middle of the 6<sup>th</sup> month of the Contract year and the middle of the 7<sup>th</sup> Contract month.

### **2.5.2.2 Summary of BRS Plans or Reports**

<b>Title</b>	<b>Section Reference #</b>	<b>When Due</b>
Treatment Plan	2.3.2.2.5. A	Within 24 hours of Admission into BRS
Transition Plan	2.3.2.2.5. B	Within 48 hours of Admission into BRS
Long-term Service Plan	2.3.2.2.5. G	Within 5 calendar days of when 1 <sup>st</sup> begin receiving services, based on the results of the individual planning team meeting
Fading Plan	2.3.2.2.5. H	Initially: by 12:00 noon on the 1 <sup>st</sup> Tuesday after Admission Ongoing: by 12:00 noon each Tuesday while in service
MCIS Plan	2.3.3.1.2. D.2	Within 24 hours of an intervention with an individual, in the form of a Crisis Behavioral Assessment
Weekly BRS Sum.	2.3.2.2.5. J	By 12:00 noon each Tuesday as part of Weekly Report

## **2.6 Quality Performance Measures**

**2.6.1 Performance Evaluation.** The Contractor must have an evaluation component, including the procedures and tools to be used in indicating the performance measures and outcomes of the service evaluation.

2.6.1.1 As per Section 5.3.2.F.3.v, Offerors must describe how they will evaluate their performance under the Contract. At the very least, the Contractor's Evaluation Component must address how the Contractor will assure that the requirements for BR recipients described in Section 2.5.1.3.2.2 will be met.

2.6.1.2 All procedures and documents the Contractor intends to use to assure proper performance under the Contract must be submitted to the Contract Monitor for approval in writing at least 15 days prior to the NTP Date.

**2.6.2 Tickler Notifications.** Section 2.4.2 E requires both the Contract Monitor and the Contractor Contract Manager to be automatically notified if the entries in the On-line Information Database indicate that any report or plan listed in Section 2.5 is not completed within the required time-frame. When such notice is received, the Contract Monitor can:

2.6.2.1 Determine that any failure to meet a completion time-frame is negligible (e.g. only a few minutes overdue) and does not require any action by the Contractor.

2.6.2.2 Discuss the variation with the Contractor to determine the reason for the completion deficiency. Based upon that discussion the Contract Monitor can determine that:

A. No further action is required.

B. The Contractor's proposed self-correction plan or action is sufficient.

C. A formal Corrective Action Plan as described in Section 2.5.1.5 is needed.

### **3 Contractor Requirements: General**

#### **3.1 Contract Initiation Requirements**

- A. The Contractor will be provided at least a 45-day Start-Up Period.
- B. The Contractor must participate in both fact-to-face meetings and conference calls with the Department for the purposes of coordinating implementation activities on an as needed basis.
- C. The Contractor must schedule and hold a kickoff meeting within fifteen (15) Business Days after the NTP Date. At the kickoff, the Contractor must submit a finalized work plan to meet all of the requirements of this RFP outlined in the Technical Proposal, along with an update project schedule describing the activities for the Contractor, the State, and any third parties for fully transitioning to the Contractor.

#### **3.2 End of Contract Transition**

- 3.2.1 The Contractor must provide transition assistance as requested by the State to facilitate the orderly transfer of services to the State or a follow-on contractor, for a period up to ninety (90) days prior to Contract end date, or the termination thereof. Such transition efforts shall consist, not by way of limitation, of:
  - A. Providing additional services and support as requested to successfully complete the transition; and
  - B. Maintaining the services called for by the Contract at the required level of proficiency.
- 3.2.2 The Contractor must work toward a prompt and timely transition, proceeding in accordance with the directions of the Contract Monitor. The Contract Monitor may provide the Contractor with additional instructions to meet specific transition requirements prior to the end of the Contract.
- 3.2.3 The Contractor shall ensure that as of the last day of the Contract, as directed by the Contract Monitor all necessary knowledge and materials for the tasks completed are transferred to the custody of State personnel or a third party.
- 3.2.4 The Contractor shall support end-of-contract transition efforts with technical and project support to include but not be limited to a draft Transition-Out Plan ninety (90) days in advance of the Contract end date. The Transition-Out Plan shall address at a minimum the following areas:
  - A. Any staffing concerns/issues related to the closeout of the Contract; and
  - B. Communications and reporting process between the Contractor, the Contract Monitor, and any other Department personnel identified by the Contract Monitor.

#### **3.3 Invoicing**

##### **3.3.1 General**

- A. The Contractor must sign, authorize, and send the original of each invoice to the Contract Monitor, at Developmental Disabilities Administration (DDA), 201 W. Preston Street, 4<sup>th</sup> Floor, Baltimore, Maryland 21201.
- B. All invoices for services shall be verified by the Contractor as accurate at the time of submission.

- C. An invoice not satisfying the requirements of a Proper Invoice (as defined at COMAR 21.06.09.01 and .02) cannot be processed for payment. To be considered a Proper Invoice, invoices must include the following information, without error:
- 1) Contractor name and address;
  - 2) Remittance address;
  - 3) Federal taxpayer identification (FEIN) number, social security number, as appropriate;
  - 4) Invoice period (i.e. time period during which services covered by invoice were performed);
  - 5) Invoice date;
  - 6) Invoice number;
  - 7) State assigned Contract number;
  - 8) State assigned (Blanket) Purchase Order number(s);
  - 9) Goods or services provided which identify and separate Mobile Crisis and Behavioral Respite Services; and;
  - 10) Amount due; and
  - 11) Any additional documentation required by regulation or the Contract.
- D. Invoices must separate charges for Mobile Crisis services from charges for Behavior Respite Services.
- E. The Department reserves the right to reduce or withhold Contract payment in the event the Contractor does not provide the Department with all required deliverables within the time frame specified in the Contract or otherwise breaches the terms and conditions of the Contract until such time as the Contractor brings itself into full compliance with the Contract.
- F. Any action on the part of the Department, or dispute of action by the Contractor, will be in accordance with the provisions of Md. Code Ann., State Finance and Procurement Article §§ 15-215 through 15-223 and with COMAR 21.10.04.
- G. The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. The Contractor; however, is not exempt from such sales and use taxes and may be liable for the same.
- H. Invoices for final payment must be clearly marked as “FINAL” and submitted when all work requirements have been completed and no further charges are to be incurred under the Contract. In no event may any invoice be submitted later than the end of the 90-day Retention period as described in 3.2 D.

### **3.3.2 Invoice Submission Schedule**

The Contractor must submit invoices by the 15<sup>th</sup> of the month following the month in which services were rendered. The amount of the payment must be the total of itemized services provided for the previous month:

## **1. Behavioral Respite Services Billing**

### **A. Allowable Billing Activities**

- i. The Contractor must bill by “billing unit.” The billing unit includes all services mandated by COMAR and the RFP for Behavioral Respite Services (i.e., room, board, staffing as clinically indicated, administrative/clinical supervision, documentation, nursing assessments, nursing, care coordination, assistive technology, behavioral support services, family support, personal support transition services, discharge planning, reporting, transportation, preparing weekly data collection reports, etc.) provided in a 24-hour period.
- ii. As a single daily rate, the Behavioral Respite Services billing unit includes any billable activity that would fit the definitions of BCS, BSS, and therapeutic groups.

### **B. Unallowable Billing Activities.**

The Contractor must not bill for:

- i. Multiple units of BRS on the same day.
- ii. Either of the activities listed under a and b, below, since these activities are part of the waivers that cover BCS and BSS:
  - a. BCS, BSS, and/or MCIS in addition to one unit of BRS on a given day.
  - b. Additional Behavioral Assessments while receiving Behavioral Respite Services.
- iii. Separately for the supervision of Psychology Associates by Licensed Psychologists, including consultation and clinical review of strategies developed or discussing clinical concerns, nor for any other supervision of clinical staff billable by any other clinician.
- iv. The participation of any of its staff in the training described in Section 3.10.5.
- v. A BRS Billable Interval if services were exclusively or primarily provided by personnel that were not approved by the Contract Monitor as described in Section 3.10.1. 7.

## **2. Mobile Crisis Intervention Services Billing**

MCIS is only billable in thirty (30) minute increments rounded to the nearest increment (30-minute period).

### **A. For individuals without an established Behavior Assessment (BA) or BP prior to receiving MCIS:**

- i. The Contractor must not bill for any additional support staff responding to crisis events; support time is to be included in the billing of the licensed staff.
- ii. The Contractor must bill the preparation, review and completion of the Crisis Behavioral Assessment to MCIS, not BA

### **B. For Individuals with an established BA or BP prior to receiving MCIS**

As described in Section 2.3.2.1.2 d, the Contractor may bill units of BSS for a Targeted Therapeutic Staff if approved by the involved Regional Director or designee.

**C. Allowable Billing Activities**

The following must be billed by a licensed clinical professional identified in Section 2.3.2 as MCIS activity:

- i. Communication of initial assessment findings via phone or email regarding the case.
- ii. Review of clinical charts, reports, and other information.
- iii. Communication with clinical team, other treatment professionals/team, DDA, caregiver, family member.
- iv. Community and provider location on-site intervention, interview, initial assessment, and triage.
- v. Strategy development and development of a preliminary behavior support plan.
- vi. Subsequent note writing, communication regarding disposition.
- vii. Developing the Crisis Behavioral Assessment

**D. Unallowable Billing Activities**

The Contractor must not bill:

- i. For travel to/from on-site intervention, interview, assessment or triage.
- ii. Staff, other than the licensed clinical professional identified in Section 2.3.4.1 3.10 who is supporting the MCIS activity.
- iii. Separately for supervision of Psychology Associates by Licensed Psychologists, including consultation and clinical review of strategies developed or discussing clinical concerns. Nor is any other supervision of clinical staff billable by any other clinician.
- iv. Service in a hospital setting whether a person is admitted or admission pending.
- v. For foreign language or sign language interpretation. (See Section 2.3.1.5.)
- vi. For the participation of any of its staff in the training described in Section 3.10.5.
- vii. For a MCIS unit if services were exclusively or primarily provided by personnel that were not approved by the Contract Monitor as described in Section 3.10.1. 7.

**3.3.3 For the purposes of the Contract an amount will not be deemed due and payable if:**

The amount invoiced is inconsistent with the Contract;

1. The proper invoice has not been received by the party or office specified in the Contract;
2. The invoice or performance is in dispute or the Contractor has failed to otherwise comply with the provisions of the Contract;
3. The item or services have not been accepted;
4. The quantity of items delivered is less than the quantity ordered;
5. The items or services do not meet the quality requirements of the Contract;
6. If the Contract provides for progress payments, the proper invoice for the progress payment has not been submitted pursuant to the schedule;
7. If the Contract provides for withholding a retainage and the invoice is for the retainage, all stipulated conditions for release of the retainage have not been met; or
8. The Contractor has not submitted satisfactory documentation or other evidence reasonably required by the Procurement Officer or by the Contract concerning performance under the Contract and compliance with its provisions.

**3.3.4 Travel Reimbursement**

Travel will not be reimbursed under this RFP.

**3.4 Liquidated Damages**

3.4.1 MBE liquidated damages are identified in Attachment M.

3.4.2 There are no Liquidated Damages (Service Level Agreements, Etc.), other than MBE.

**3.5 Disaster Recovery and Data**

The following requirements apply to the Contract:

**3.5.1 Redundancy, Data Backup and Disaster Recovery**

- A. Unless specified otherwise in the RFP, Contractor must maintain or cause to be maintained disaster avoidance procedures designed to safeguard State data and other confidential information, Contractor's processing capability and the availability of hosted services, in each case throughout the Contract term. Any force majeure provisions of the Contract do not limit the Contractor's obligations under this provision.
- B. The Contractor and any relevant subcontractor(s) must have robust contingency and disaster recovery (DR) plans in place to ensure that the services provided under the Contract will be maintained in the event of disruption to the Contractor/subcontractor's operations (including, but not limited to, disruption to information technology systems), however caused.
  - 1) The Contractor must furnish a DR site.
  - 2) The DR site must be at least 100 miles from the primary operations site and have the capacity to take over complete production volume in case the primary site becomes unresponsive.
- C. The contingency and DR plans must be designed to ensure that services under the Contract are restored after a disruption within twenty-four (24) hours from notification and a recovery point objective of one (1) hour or less prior to the outage in order to avoid unacceptable consequences due to the unavailability of services.
- D. The Contractor must test the contingency/DR plans at least twice annually to identify any changes that need to be made to the plan(s) to ensure a minimum interruption of service. Coordination must be made with the State to ensure limited system downtime when testing is conducted. At least one (1) annual test must include backup media restoration and failover/fallback operations at the DR location. The Contractor must send the Contract Monitor a notice of completion following completion of DR testing.
- E. Such contingency and DR plans must be available for the Department to inspect and practically test at any reasonable time, and subject to regular updating, revising, and testing throughout the term of the Contract.

**3.5.2 Data Export/Import**

- A. The Contractor must, at no additional cost to the State, in an industry standard/non-proprietary format:
  - 1) perform a full or partial import/export of State data within 24 hours of a request; and/or
  - 2) provide the State with the ability to import/export data "at will". Provide the State with required access and instructions needed for the State to import or export required data.

- B. Any import or export must be in a secure format per the Security Requirements.

### **3.5.3 Data Ownership and Access**

- A. Data, databases and derived data products created, collected, manipulated, or directly purchased as part of a RFP are the property of the State. The purchasing State agency is considered the custodian of the data and must determine the use, access, distribution, and other conditions based on appropriate State statutes and regulations.
- B. Public jurisdiction user accounts and public jurisdiction data must not be accessed, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of the Contract, including as necessary to perform the services hereunder or (4) at the State's written request.
- C. The Contractor must limit access to and possession of State data to only Contractor Personnel whose responsibilities reasonably require such access or possession and must train such Contractor Personnel on the confidentiality obligations set forth herein.
- D. At no time shall any data or processes – that either belong to or are intended for the use of the State or its officers, agents, or employees – be copied, disclosed, or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- E. The Contractor must not use any information collected in connection with the services furnished under the Contract for any purpose other than fulfilling such services.

- 3.5.4 Provisions in Sections 3.5.1 – 3.5.3 shall survive expiration or termination of the Contract. Additionally, the Contractor must flow down the provisions of Sections 3.5.1-3.5.3 (or the substance thereof) in all subcontracts.

## **3.6 Insurance Requirements**

The Contractor must maintain, at a minimum, the insurance coverages outlined below, or any minimum requirements established by law if higher, for the duration of the Contract, including option periods, if exercised:

- 3.6.1 The following type(s) of insurance and minimum amount(s) of coverage are required:
- A. Commercial General Liability - of \$1,000,000 combined single limit per occurrence for bodily injury, property damage, and personal and advertising injury and \$3,000,000 annual aggregate. The minimum limits required herein may be satisfied through any combination of primary and umbrella/excess liability policies.
  - B. Errors and Omissions/Professional Liability - \$1,000,000 per combined single limit per claim and \$3,000,000 annual aggregate.
  - C. Crime Insurance/Employee Theft Insurance - to cover employee theft with a minimum single loss limit of \$1,000,000 per loss, and a minimum single loss retention not to exceed \$10,000. The State of Maryland and the Department should be added as a "loss payee."
  - D. Cyber Security / Data Breach Insurance – (For any service offering hosted by the Contractor) ten million dollars (\$10,000,000) per occurrence. The coverage must be valid at all locations where work is performed or data or other information concerning the State's claimants or employers is processed or stored.
  - E. Worker's Compensation - The Contractor must maintain such insurance as necessary or as required under Workers' Compensation Acts, the Longshore and Harbor Workers'



Compensation Act, and the Federal Employers' Liability Act, to not be less than one million dollars (\$1,000,000) per occurrence (unless a state's law requires a greater amount of coverage). Coverage must be valid in all states where work is performed.

- F. Automobile or Commercial Truck Insurance - The Contractor must maintain Automobile or Commercial Truck Insurance (including owned, leased, hired, and non-owned vehicles) as appropriate with Liability, Collision, and PIP limits no less than those required by the State where the vehicle(s) is registered, but in no case less than those required by the State of Maryland.

- 3.6.2 The State of Maryland must be listed as an additional insured on the faces of the certificates associated with the coverages listed above, including umbrella policies, excluding Workers' Compensation Insurance and professional liability.
- 3.6.3 All insurance policies must be endorsed to include a clause requiring the insurance carrier provide the Procurement Officer, by certified mail, not less than 30 days' advance notice of any non-renewal, cancellation, or expiration. The Contractor must notify the Procurement Officer in writing if policies are cancelled or not renewed within five (5) days of learning of such cancellation or nonrenewal. The Contractor must provide evidence of replacement insurance coverage to the Procurement Officer at least 15 days prior to the expiration of the insurance policy then in effect.
- 3.6.4 Any insurance furnished as a condition of the Contract must be issued by a company authorized to do business in the State.
- 3.6.5 The recommended awardee must provide current certificate(s) of insurance with the prescribed coverages, limits, and requirements set forth in this section within five (5) Business Days from notice of recommended award. During the period of performance for multi-year contracts, the Contractor must provide certificates of insurance annually, no less than seven (7) Business Days prior to the start of each new Contract year, including any Option Year renewal exercised by the Department, or as otherwise directed by the Contract Monitor.

**3.6.6 Subcontractor Insurance**

The Contractor must require any subcontractors to obtain and maintain comparable levels of coverage and must provide the Contract Monitor with the same documentation as is required of the Contractor.

### **3.7 Security Requirements**

The following requirements are applicable to the Contract:

**3.7.1 Employee Identification**

- A. Contractor Personnel must display his or her company ID badge in a visible location at all times while on State premises. Upon request of authorized State personnel, each Contractor Personnel must provide additional photo identification.
- B. Contractor Personnel must cooperate with State site requirements, including but not limited to, being prepared to be escorted at all times, and providing information for State badge issuance.
- C. Contractor must remove any Contractor Personnel from working on the Contract where the State determines, in its sole discretion that Contractor Personnel has not adhered to the Security requirements specified herein.



- D. The State reserves the right to request that the Contractor submit proof of employment authorization of non-United States Citizens, prior to commencement of work under the Contract.

**3.7.2 Security Clearance/Criminal Background Check**

- A. A criminal background check for each Contractor and subcontractor personnel providing work on the Contract shall be completed prior to each Contractor/subcontractor Personnel providing any services under the Contract.
- B. The Contractor must obtain at its own expense a Criminal Justice Information System (CJIS) State and federal criminal background check, including fingerprinting, for all Contractor Personnel listed in sub-paragraph A. This check may be performed by a public or private entity.
- C. The Contractor must provide certification to the Department that the Contractor has completed the required criminal background check described in this RFP for each required Contractor Personnel prior to assignment, and that the Contractor Personnel have successfully passed this check.
- D. Persons with a criminal record may not perform services under the Contract unless prior written approval is obtained from the Contract Monitor. The Contract Monitor reserves the right to reject any individual based upon the results of the background check. Decisions of the Contract Monitor as to acceptability of a candidate are final. The State reserves the right to refuse any individual Contractor Personnel to work on State premises, based upon certain specified criminal convictions, as specified by the State.

**3.7.3 On-Site Security Requirement(s)**

- A. For the conditions noted below, Contractor Personnel may be barred from entrance or leaving any site until such time that the State's conditions and queries are satisfied.
- B. Contractor Personnel may be subject to random security checks when entering and leaving State secured areas. The State reserves the right to require Contractor Personnel to be accompanied while in secured premises.
- C. Any Contractor Personnel who enters the premises of a facility under the jurisdiction of the Department may be searched, fingerprinted (for the purpose of a criminal history background check), photographed, and required to wear an identification card issued by the Department.
- D. Further, Contractor Personnel must not violate Md. Code Ann., Criminal Law Art. Section 9-410 through 9-417 and such other security policies of the agency that controls the facility to which the Contractor Personnel seeks access. The failure of any of the Contractor Personnel to comply with any provision of the Contract is sufficient grounds for the State to immediately terminate the Contract for default.

**3.7.4 Information Technology**

The Contractor must:

- A. Implement administrative, physical, and technical safeguards to protect State data that are no less rigorous than accepted industry best practices for information security such as those listed below (see **Section 3.7.5**);
- B. Ensure that all such safeguards, including the manner in which State data is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws as well as the terms and conditions of the Contract; and

- C. The Contractor, and Contractor Personnel, must (i) abide by all applicable federal, State and local laws, rules and regulations concerning security of Information Systems and Information Technology and (ii) comply with and adhere to the State IT Security Policy and Standards as each may be amended or revised from time to time. Updated and revised versions of the State IT Policy and Standards are available online at: [www.doit.maryland.gov](http://www.doit.maryland.gov) – keyword: Security Policy.

### **3.7.5 Data Protection and Controls**

- A. Contractor and any subcontractor(s) must ensure a secure environment for all State data and any hardware and software (including but not limited to servers, network and data components) provided or used in connection with the performance of the Contract and must apply or cause application of appropriate controls so as to maintain such a secure environment (“Security Best Practices”). Such Security Best Practices must comply with an accepted industry standard, such as the NIST cybersecurity framework.
- B. To ensure appropriate data protection safeguards are in place, the Contractor must implement and maintain the following controls at all times throughout the Term of the Contract (the Contractor and any relevant subcontractor(s) may augment this list with additional information technology controls):
1. Ensure that State data is not comingled with non-State data through the proper application of compartmentalization security measures.
  2. For all State data the Contractor manages or controls, data encryption shall be applied to such data in transit over untrusted networks.
  3. Encryption algorithms which are utilized for encrypting data shall comply with current Federal Information Processing Standards (FIPS), “Security Requirements for Cryptographic Modules”, FIPS PUB 140-2:  
<http://csrc.nist.gov/publications/fips/fips140-2/fips1402.pdf>  
<http://csrc.nist.gov/groups/STM/cmvp/documents/140-1/1401vend.htm>
  4. Enable appropriate logging parameters on systems supporting services provided under this Contract to monitor user access activities, authorized and failed access attempts, system exceptions, and critical information security events as recommended by the operating system and application manufacturers as well as information security standards including the current State of Maryland Department of Information Security Policy:  
<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>
  5. Retain the aforementioned logs and review them at least daily to identify suspicious or questionable activity for investigation and documentation as to their cause and perform remediation, if required. The Department shall have the right to inspect these policies and procedures and the Contractor or subcontractor’s performance to confirm the effectiveness of these measures for the services being provided under this Contract.
  6. Ensure system and network environments are separated by properly configured and updated firewalls.
  7. Restrict network connections between trusted and untrusted networks by physically or logically isolating systems from unsolicited and unauthenticated network traffic.
  8. By default “deny all” and only allow access by exception.
  9. Enforce strong user authentication and password control measures over the Contractor/subcontractor’s systems supporting the services provided under this Contract to

minimize the opportunity for unauthorized system access through compromise of the user access controls. At a minimum, the implemented measures should be consistent with the most current State of Maryland Department of Information Technology's Information Security Policy (<http://doit.maryland.gov/support/Pages/SecurityPolicies.aspx>), including specific requirements for password length, complexity, history, and account lockout.

10. Ensure State data under this service is not processed, transferred, or stored outside of the United States. The Contractor shall provide its services to the State and the State's end users solely from data centers in the U.S. Unless granted an exception in writing by the State, the Contractor shall not allow Contractor Personnel to store State data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its Contractor Personnel to access State data remotely only as required to provide technical support.
11. Ensure Contractor's Personnel shall not connect any of its own equipment to a State LAN/WAN without prior written approval by the State, which may be revoked at any time for any reason. The Contractor shall complete any necessary paperwork as directed and coordinated with the Contract Monitor to obtain approval by the State to connect Contractor -owned equipment to a State LAN/WAN.
12. Ensure that anti-virus and anti-malware software is installed and maintained on all systems supporting the services provided under this Contract, automatically updated, and configured to actively scan and detect threats to the system for remediation. The Contractor shall perform routine vulnerability scans and take corrective actions for any findings.
13. Conduct regular external vulnerability testing designed to examine the service provider's security profile from the Internet without benefit of access to internal systems and networks behind the external security perimeter. Evaluate all identified vulnerabilities on Internet-facing devices for potential adverse effect on the service's security and integrity and remediate the vulnerability promptly or document why remediation action is unnecessary or unsuitable. The Department shall have the right to inspect these policies and procedures and the performance of vulnerability testing to confirm the effectiveness of these measures for the services being provided under the Contract.

#### **3.7.6 Security Incident Response**

- A. The Contractor shall notify the Department in accordance with **Section 3.7.6 A-D** when any Contractor and/or subcontractor system that may access, process, or store State data or State systems experiences a Security Incident or a Data Breach as follows:
  - 1) notify the Department within twenty-four (24) hours of the discovery of a Security Incident by providing notice via written or electronic correspondence to the Contract Monitor, Department chief information officer and Department chief information security officer;
  - 2) notify the Department within two (2) hours if there is a threat to Contractor's Solution as it pertains to the use, disclosure, and security of State data; and
  - 3) provide written notice to the Department within one (1) Business Day after Contractor's discovery of unauthorized use or disclosure of State data and thereafter all information the Department requests concerning such unauthorized use or disclosure.
- B. The Contractor, within twenty-four (24) hours of discovery, shall report to the Contract Monitor any improper or non-authorized use or disclosure of Sensitive Data. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. The Contractor's report shall identify:

- 1) the nature of the unauthorized use or disclosure;
- 2) the State data used or disclosed,
- 3) who made the unauthorized use or received the unauthorized disclosure;
- 4) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and
- 5) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure.

The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

- C. The Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. Discussing Security Incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the Contract.
- D. The Contractor shall comply with all applicable laws that require the notification of individuals in the event of unauthorized release PII or of State data or other event requiring notification, and, where notification is required, assume responsibility for informing all such individuals in accordance with applicable law and to indemnify and hold harmless the Department and its officials and employees from and against any claims, damages, and actions related to the event requiring notification.

### **3.7.7 Data Breach Responsibilities**

- A. If the Contractor reasonably believes or has actual knowledge of a Data Breach, the Contractor shall, unless otherwise directed:
  - 1) Notify the appropriate State-identified contact within 24 hours by telephone in accordance with the agreed upon security plan or security procedures unless a shorter time is required by applicable law;
  - 2) Cooperate with the State to investigate and resolve the data breach;
  - 3) Promptly implement commercially reasonable remedial measures to remedy the Data Breach; and
  - 4) Document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services.
- B. If a Data Breach is a direct result of the Contractor's breach of its Contract obligation to encrypt State data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by State law; (3) a credit monitoring service required by State or federal law; (4) a website or a toll-free number and call center for affected individuals required by State law; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to the Contract's limitation of liability.

- 3.7.8 The State shall, at its discretion, have the right to review and assess the Contractor's compliance to the security requirements and standards defined in the Contract.

- 3.7.9 Provisions in Sections 3.7.1 – 3.7.7 shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of Sections 3.7.4-3.7.7 (or the substance thereof) in all subcontracts.

### **3.8 Problem Escalation Procedure**

- 3.8.1 The Contractor must provide and maintain a Problem Escalation Procedure (PEP) for both routine and emergency situations. The PEP must state how the Contractor will address problem situations as they occur during the performance of the Contract, especially problems that are not resolved to the satisfaction of the State within appropriate timeframes.
- 3.8.2 The Contractor shall provide contact information to the Contract Monitor, as well as to other State personnel as directed should the Contract Monitor not be available.
- 3.8.3 The Contractor must provide the PEP no later than ten (10) Business Days after notice of recommended award. The PEP, including any revisions thereto, must also be provided within ten (10) Business Days after the start of each Contract year and within ten (10) Business Days after any change in circumstance which changes the PEP. The PEP shall detail how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. The PEP shall include:
- A. The process for establishing the existence of a problem;
  - B. Names, titles, and contact information for progressively higher levels of personnel in the Contractor's organization who would become involved in resolving a problem;
  - C. For each individual listed in the Contractor's PEP, the maximum amount of time a problem will remain unresolved with that individual before the problem escalates to the next contact person listed in the Contractor's PEP;
  - D. Expedited escalation procedures and any circumstances that would trigger expediting them;
  - E. The method of providing feedback on resolution progress, including the frequency of feedback to be provided to the State;
  - F. Contact information for persons responsible for resolving issues after normal business hours (e.g., evenings, weekends, holidays) and on an emergency basis; and
  - G. A process for updating and notifying the Contract Monitor of any changes to the PEP.
- 3.8.4 Nothing in this section shall be construed to limit any rights of the Contract Monitor or the State which may be allowed by the Contract or applicable law.

### **3.9 SOC 2 Type 2 Audit Report**

- 3.9.1 A SOC 2 Type 2 Audit must be performed for this Contract. The applicable trust principles are Confidentiality and Privacy as defined in the Guidance referenced below.
- 3.9.2 In the event the Contractor provides services for identified critical functions, handles Sensitive Data, or hosts any related implemented system for the State under the Contract, the Contractor shall have an annual audit performed by an independent audit firm of the Contractor's handling of Sensitive Data or the Department's critical functions. Critical functions are identified as all aspects and functionality of the Solution including any add-on modules and shall address all areas relating to Information Technology security and operational processes. These services provided by the Contractor that shall be covered by the audit will collectively be referred to as the "Information Functions and Processes." Such audits shall be performed in accordance with audit

guidance: Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy (SOC 2) as published by the American Institute of Certified Public Accountants (AICPA) and as updated from time to time, or according to the most current audit guidance promulgated by the AICPA or similarly-recognized professional organization, as agreed to by the Department, to assess the security of outsourced client functions or data (collectively, the “Guidance”) as follows:

- A. The type of audit to be performed in accordance with the Guidance is a SOC 2 Type 2 Audit (referred to as the “SOC 2 Audit” or “SOC 2 Report”). All SOC2 Audit Reports shall be submitted to the Contract Monitor as specified in Section F below. The initial SOC 2 Audit shall be completed within a timeframe to be specified by the State. The audit period covered by the initial SOC 2 Audit shall start with the Contract Effective Date unless otherwise agreed to in writing by the Contract Monitor. All subsequent SOC 2 Audits after this initial audit shall be performed at a minimum on an annual basis throughout the Term of the Contract, and shall cover a 12-month audit period or such portion of the year that the Contractor furnished services.
- B. The SOC 2 Audit shall report on the suitability of the design and operating effectiveness of controls over the Information Functions and Processes to meet the requirements of the Contract, including the Security Requirements identified in **Section 3.7**, relevant to the trust principles identified in 3.9.1: as defined in the aforementioned Guidance.
- C. The audit scope of each year’s SOC 2 Report may need to be adjusted (including the inclusion or omission of the relevant trust services principles of Security, Availability, Processing Integrity, Confidentiality, and Privacy) to accommodate any changes to the environment since the last SOC 2 Report. Such changes may include but are not limited to the addition of Information Functions and Processes through modifications to the Contract or due to changes in Information Technology or the operational infrastructure. The Contractor shall ensure that the audit scope of each year’s SOC 2 Report engagement shall accommodate these changes by including in the SOC 2 Report all appropriate controls related to the current environment supporting the Information Functions and/or Processes, including those controls required by the Contract.
- D. The scope of the SOC 2 Report shall include work performed by any subcontractors that provide essential support to the TO Contractor or essential support to the Information Functions and Processes provided to the Department under the Contract. The Contractor shall ensure the audit includes all such subcontractors operating in performance of the Contract.
- E. All SOC 2 Audits, including those of the Contractor, shall be performed at no additional expense to the Department.
- F. The Contractor shall provide to the Contract Monitor, within 30 calendar days of the issuance of each SOC 2 Report, a complete copy of the final SOC 2 Report(s) and a documented corrective action plan addressing each audit finding or exception contained in the SOC 2 Report. The corrective action plan shall identify in detail the remedial action to be taken by the Contractor along with the date(s) when each remedial action is to be implemented.
- G. If the Contractor currently has an annual, independent information security assessment performed that includes the operations, systems, and repositories of the Information Functions and Processes being provided to the Department under the Contract, and if that assessment generally conforms to the content and objective of the Guidance, the Department



will determine in consultation with appropriate State government technology and audit authorities whether the Contractor's current information security assessments are acceptable in lieu of the SOC 2 Report(s).

- H. If the Contractor fails during the Contract term to obtain an annual SOC 2 Report by the date specified in **Section 3.9.2.A**, the Department shall have the right to retain an independent audit firm to perform an audit engagement of a SOC 2 Report of the Information Functions and Processes utilized or provided by the Contractor and under the Contract. The Contractor agrees to allow the independent audit firm to access its facility/ies for purposes of conducting this audit engagement(s), and will provide the necessary support and cooperation to the independent audit firm that is required to perform the audit engagement of the SOC 2 Report. The Department will invoice the Contractor for the expense of the SOC 2 Report(s), or deduct the cost from future payments to the Contractor.
- I. Provisions in **Section 3.9.1-2** shall survive expiration or termination of the Contract. Additionally, the Contractor shall flow down the provisions of **Section 3.9.1-2** (or the substance thereof) in all subcontracts.

### **3.10 Experience and Personnel**

#### **3.10.1 Preferred Offeror Experience**

THIS SECTION IS INAPPLICABLE TO THIS RFP.

#### **3.10.2 Personnel Experience**

The Contractor must provide at a minimum the number and type of personnel described in this Section, as well as any additional personnel described in its Technical Proposal. Any personnel designated as Key Personnel will be subject to the substitution requirements specified in Section 3.11 of this RFP.

- 3.10.2.1** The Contract Monitor must pre-approve all clinical or professional staff working under this Contract, including staff of subcontractors.
- 3.10.2.2** Individual staff that were specifically identified in the Contractor's Technical Proposal by name and with resumes will be deemed accepted unless the Contract Monitor otherwise notifies the Contractor no less than 20 days prior to the NTP Date of their unacceptability or with a request for more information, such as a request for evidence of appropriate training and experience.
- 3.10.2.3** Individuals identified in this Section as Key Personnel that were not specifically identified by name in the Contractor's Technical Proposal must be provided to the Contract Monitor no less than 30 days prior to the NTP Date, along with resumes and appropriate evidence of required training and experience.
- 3.10.2.4** Individuals who are intended to provide services as of the NTP Date but not in positions designated as Key Personnel, shall be identified to the Contract Monitor no less than 20 days prior to the NTP Date, along with resumes and appropriate evidence of required training and experience.
- 3.10.2.5** If the Contract Monitor requires additional information concerning any proposed staff, the Contractor must provide the requested information within 3 Business Days or provide an explanation of why it cannot do so and the projected timeframe within which the information will be provided.

- 3.10.2.6** If the Contract Monitor rejects any proposed personnel, the Contractor shall propose a replacement for that person within 5 Business Days or other specified timeframe.
- 3.10.2.7** Approval from the Contract Monitor for any non-Key Personnel (the addition of Key Personnel is described in Section 3.11), proposed to be added after the NTP Date must be requested no less than 15 days prior to the intended start-date of those personnel.
- 3.10.2.8** The Contractor will not be paid for any services performed by clinical or professional personnel that were not approved by the Contract Monitor to work under the Contract. (See Sections 3.3.2.1.B.v and 3.3.2.2.D.vii.)

**3.10.3 Contractor Contract Manager (Designated Key Personnel)**

The Contractor must have a Contractor Contract Manager as described in the Appendix 1 definitions. In the event that an Offeror wins more than 1 Region, the Contractor may either designate a different person to perform this function in each Region for which it receives an award, or, with the written approval of the Contract Monitor, have the same person fulfill this role in more than one (1) Region, including all Regions for which it was awarded a Contract..

**3.10.4 Behavioral Respite Services Requirements**

- 1. Minimum of one (1) Master's Degree Level Psychologist, Licensed Certified Social Worker or Licensed Professional Counselor per Region licensed as provided by COMAR 10.22, to serve as a team leader. The single clinician that is designated as a team leader shall be deemed to be a Key Personnel. Any additional clinicians working under the Contract will not be considered a Key Personnel, unless so designated by the Contractor in its Technical Proposal.
- 2. Minimum of one (1) Master's Degree Level Psychology Associate (PA) per Region to serve as a team leader. The PAs shall be under the supervision of a Maryland Licensed Psychologist. The PAs must be licensed as provided by COMAR 10.05. The single PA that is designated as a team leader shall be deemed to be a Key Personnel. Any additional PAs working under the Contract will not be considered a Key Personnel, unless so designated by the Contractor in its Technical Proposal.
- 3. Minimum of two (2) Behavioral Consultants per Region, licensed as provided by COMAR 10.05, to serve as a team leader. The Behavioral Consultants shall be a Licensed Psychologist, Licensed Certified Social Worker, Licensed Professional Counselor, Licensed Behavior Analysts or a Master's Degree Level Psychology Associates (PA) under the supervision of a Maryland Licensed Psychologist. The two BCs that are designated as team leaders shall be deemed to be Key Personnel. Any additional BCs working under the Contract will not be considered a Key Personnel, unless so designated by the Contractor in its Technical Proposal.

**3.10.5 Mobile Crisis Intervention Services Personnel Requirements**

- 1. The Contractor shall have a number of the below identified number and type of health professionals either on its staff or otherwise available to respond to a reported behavioral crisis of an eligible individual. The Contractor must have a sufficient number of perhaps geographically dispersed such health professionals, with a broad spectrum of training and experience such that regardless of the time, day or location of a crisis situation, one or more of the below identified health professionals will be physically present on-site within the required 3-hour timeframe stated in Section 2.3.2.1.2 to evaluate the individual in crisis. Both the health professionals who made the physical, on-site evaluation of the individual in crisis and, as deemed appropriate, other non-present health professionals may participate in performing the Crisis Behavioral Assessment that is due within 24 hours of the Crisis Intervention.



2. The Contractor's Mobile Crisis Intervention team must consist of at least one of:
  - 1) Licensed Psychologist,
  - 2) Psychology Associate; working under the supervision of a Maryland Licensed Psychologist
  - 3) Licensed Certified Social Worker; or
  - 4) Licensed Professional Counselor.
3. If the Contractor only has one of these possible positions on its MCIS team, that single position is designated as a Key Personnel. If the Contractor has more than one of these personnel on its MCI team, it shall designate at least one such person as a Key Personnel.
4. In addition to the single above identified position that will be designated as a Key Personnel, the Contractor must also have one or more behavioral support staff trained to respond to and evaluate behavioral emergencies on site in an effort to resolve crisis situations. Such additional support staff include, but are not limited to:
  - a. Licensed Certified Social Workers;
  - b. Licensed Behavior Analysts;
  - c. Licensed PAs working under the supervision of a Maryland Licensed Psychologist;
  - d. Licensed Psychologists; and
  - e. Licensed Professional Counselors.
5. Any State of Maryland licensed health occupation professional (Licensed Behavior Analyst, Licensed Professional Counselor, Licensed Certified Social Worker, Licensed Psychologist, PA registered with the Maryland Board of Examiners working under the supervision of a Licensed Psychologist or Licensed Physician) proposed to work under the Contract as part of the Mobile Crisis Intervention team must have training and experience in behavior analysis, trauma informed care, and crisis intervention. One or more of such appropriately licensed, trained and experienced professionals must be physically present on-site to evaluate the individual in crisis.

#### **3.10.6 Required Training**

- 3.10.6.1 All staff, including Behavioral Consultants, shall have completed or shall complete prior to performing work under this Contract the DDA minimum mandatory requirements for training in COMAR 10.22.02.11 C & D, as well as training in Behavioral Principles and Strategies (BPS) (COMAR 10.22.10.04). Evidence of completing all required training must be maintained for all applicable staff in the On-Line Database described in Section 2.4.
- 3.10.6.2 The Contractor shall participate in all training that is offered through MD START (see Appendix 1 definition). Evidence of such participation shall be maintained in the On-Line Database described in Section 2.4.
- 3.10.6.3 The Contractor will not be paid for any time spent by its staff in completing any of the training described in Sections 3.10.5.1 or 3.10.5.2. (See Sections 3.3.2.1. B. iv and 3.3.2.2.D.vi.)
- 3.10.7 In the On-Line Database described in Section 2.4, the Contractor shall maintain a file for each Behavioral Consultant which, at a minimum, shall include a copy of his/her resume, work sample, appropriate licensure/certification and proof of liability or malpractice insurance., either individually or as part of the required insurance of the Contractor. (See Section 3.6.)

### **3.10.8 Contractor Personnel Maintain Certifications**

Any Contractor personnel provided under this RFP shall maintain in good standing any required professional certifications for the duration of the Contract

## **3.11 Substitution of Personnel**

### **3.11.1 Continuous Performance of Key Personnel**

When Key Personnel are identified for the Contract, the following apply:

- A. Key Personnel shall be available to perform Contract requirements as of the NTP Date. Unless explicitly authorized by the Contract Monitor or specified in the Contract, Key Personnel shall be assigned to the State of Maryland as a dedicated resource.
- B. Key Personnel shall perform continuously for the duration of the Contract, or such lesser duration as specified in the Technical Proposal. Key Personnel may not be removed by the Contractor from working under the Contract without the prior written approval of the Contract Monitor.
- C. The provisions of this section apply to Key Personnel identified in any Task Order proposal and agreement, if issued, and any Work Order Request and Work Order, if issued.

### **3.11.2 Definitions**

For the purposes of this section, the following definitions apply:

- A. **Extraordinary Personal Event** – means any of: leave under the Family Medical Leave Act; an Incapacitating injury or Incapacitating illness; or other circumstances that in the sole discretion of the State warrant an extended leave of absence, such as extended jury duty or extended military service that precludes the individual from performing his/her job duties under the Contract.
- B. **Incapacitating** – means any health circumstance that substantially impairs the ability of an individual to perform the job duties described for that individual’s position in the RFP or the Contractor’s Technical Proposal.

### **3.11.3 Contractor Personnel General Substitution Provisions**

The following provisions apply to all of the circumstances of Contractor Personnel substitution described in **Section 3.11.4**.

- A. The Contractor shall demonstrate to the Contract Monitor’s satisfaction that the proposed substitute has qualifications at least equal to those of the Contractor Personnel proposed to be replaced.
- B. The Contractor shall provide the Contract Monitor with a substitution request that shall include:
  - 1) A detailed explanation of the reason(s) for the substitution request;
  - 2) The resume of the proposed substitute, signed by the substituting individual and his/her formal supervisor;
  - 3) The official resume of the current personnel for comparison purposes; and
  - 4) Evidence of any required credentials.

- C. The Contract Monitor may request additional information concerning the proposed substitution and may interview the proposed substitute personnel prior to deciding whether to approve the substitution request.
- D. The Contract Monitor will notify the Contractor in writing of: (i) the acceptance or denial, or (ii) contingent or temporary approval for a specified time limit, of the requested substitution. The Contract Monitor will not unreasonably withhold approval of a proposed Contractor Personnel replacement.

#### **3.11.4 Replacement Circumstances**

##### **A. Directed Personnel Replacement**

- 1) The Contract Monitor may direct the Contractor to replace any Contractor Personnel who, in the sole discretion of the Contract Monitor, are perceived as being unqualified, non-productive, unable to fully perform the job duties, disruptive, or known, or reasonably believed, to have committed a major infraction(s) of law, Department policies, or Contract requirements. Normally, a directed personnel replacement will occur only after prior notification of problems with requested remediation, as described in paragraph **3.11.4.A.2**.
- 2) If deemed appropriate in the discretion of the Contract Monitor, the Contract Monitor may give written notice of any Contractor Personnel performance issues to the Contractor, describing the problem and delineating the remediation requirement(s). The Contractor shall provide a written response to the remediation requirements in a Remediation Plan within ten (10) days of the date of the notice and shall immediately implement the Remediation Plan upon written acceptance by the Contract Monitor. If the Contract Monitor rejects the Remediation Plan, the Contractor shall revise and resubmit the plan to the Contract Monitor within five (5) days, or in the timeframe set forth by the Contract Monitor in writing.
- 3) Should performance issues persist despite an approved Remediation Plan, the Contract Monitor may give written notice of the continuing performance issues and either request a new Remediation Plan within a specified time limit or direct the substitution of Contractor Personnel whose performance is at issue with a qualified substitute, including requiring the immediate removal of the Contractor Personnel at issue.
- 4) Replacement or substitution of Contractor Personnel under this section shall be in addition to, and not in lieu of, the State's remedies under the Contract or which otherwise may be available at law or in equity.
- 5) If the Contract Monitor determines to direct substitution under **3.11.4.A.1**, if at all possible, at least fifteen (15) days advance notice shall be given to the Contractor. However, if the Contract Monitor deems it necessary and in the State's best interests to remove the Contractor Personnel with less than fifteen (15) days' notice, the Contract Monitor may direct the removal in a timeframe of less than fifteen (15) days, including immediate removal.
- 6) In circumstances of directed removal, the Contractor shall, in accordance with paragraph **3.11.4.A.1** of this section, provide a suitable replacement for approval within fifteen (15) days of the notification of the need for removal, or the actual removal, whichever occurs first.

**B. Key Personnel Replacement**

- 1) To replace any Key Personnel in a circumstance other than as described in **3.11.4.B**, including transfers and promotions, the Contractor shall submit a substitution request as described in **Section 3.11.3** to the Contract Monitor at least fifteen (15) days prior to the intended date of change. A substitution may not occur unless and until the Contract Monitor approves the substitution in writing.
- 2) Key Personnel Replacement Due to Sudden Vacancy
  - a) The Contractor shall replace Key Personnel whenever a sudden vacancy occurs (e.g., Extraordinary Personal Event, death, resignation, termination). A termination or resignation with thirty (30) days or more advance notice shall be treated as a replacement under **Section 3.11.4.B.1**.
  - b) Under any of the circumstances set forth in this paragraph B, the Contractor shall identify a suitable replacement and provide the same information and items required under **Section 3.11.3** within fifteen (15) days of the actual vacancy occurrence or from when the Contractor first knew or should have known that the vacancy would be occurring, whichever is earlier.
- 3) Key Personnel Replacement Due to an Indeterminate Absence
  - a) If any Key Personnel has been absent from his/her job for a period of ten (10) days and it is not known or reasonably anticipated that the individual will be returning to work within the next twenty (20) days to fully resume all job duties, before the 25th day of continuous absence, the Contractor shall identify a suitable replacement and provide the same information and items to the Contract Monitor as required under **Section 3.11.3**.
  - b) However, if this person is available to return to work and fully perform all job duties before a replacement has been authorized by the Contract Monitor the Contract Monitor may, at his/her sole discretion, authorize the original personnel to continue to work under the Contract, or authorize the replacement personnel to replace the original personnel, notwithstanding the original personnel's ability to return.

**3.12 Minority Business Enterprise (MBE) Reports**

If this solicitation includes an MBE Goal (see **Section 4.26**), the Contractor shall:

- A. Submit the following reports by the 10th of each month to the Contract Monitor and the Department's MBE Liaison Officer:
  - 1) A Prime Contractor Paid/Unpaid MBE Invoice Report (Attachment D-4A) listing any unpaid invoices, over 45 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - 2) (If Applicable) An MBE Prime Contractor Report (Attachment D-4B) identifying an MBE prime's self-performing work to be counted towards the MBE participation goals.
- B. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit an MBE Subcontractor Paid/Unpaid Invoice Report (**Attachment D-5**) by the 10th of each month to the Contract Monitor and the Department's MBE Liaison Officer that identifies the Contract and lists all payments to the MBE

subcontractor received from the Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amounts of those invoices.

- C. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the Contract, type of work performed by each, and actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the Contract.
- E. Upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

### **3.13 Veteran Small Business Enterprise (VSBE) Reports**

If this solicitation includes a VSBE Goal (see **Section 4.27**), the Contractor shall:

- A. Submit the following reports by the 10<sup>th</sup> of the month following the reporting period to the Contract Monitor and the Department VSBE representative:
  - 1) VSBE Participation Prime Contractor Paid/Unpaid VSBE Invoice Report (Attachment E-3) listing any unpaid invoices, over 45 days old, received from any VSBE subcontractor, the amount of each invoice and the reason payment has not been made; and
  - 2) **Attachment E-4**, the VSBE Participation Subcontractor Paid/Unpaid VSBE Invoice Report by the 10th of the month following the reporting period to the Contract Monitor and the VSBE Liaison Officer.
- B. Include in its agreements with its VSBE subcontractors a requirement that those subcontractors submit monthly by the 10th of the month following the reporting period to the Contract Monitor and Department VSBE representative a report that identifies the prime contract and lists all payments received from Contractor in the preceding reporting period month, as well as any outstanding invoices, and the amount of those invoices (**Attachment E-4**).
- C. Maintain such records as are necessary to confirm compliance with its VSBE participation obligations. These records must indicate the identity of VSBE and non-VSBE subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. The subcontract agreement documenting the work performed by all VSBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
- D. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the VSBE participation obligations. The Contractor must retain all records concerning VSBE participation and make them available for State inspection for three years after final completion of the Contract.

- E. At the option of the Department, upon completion of the Contract and before final payment and release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from VSBE subcontractors.

### **3.14 No-Cost Extensions**

In accordance with BPW Advisory 1995-1 item 7.b, in the event there are unspent funds remaining on the Contract, prior to the Contract's expiration date the Procurement Officer may modify the Contract to extend the Contract beyond its expiration date for a period up to, but not exceeding, one-third of the base term of the Contract (e.g., eight-month extension on a two-year contract) for the performance of work within the Contract's scope of work. Notwithstanding anything to the contrary, no funds may be added to the Contract in connection with any such extension.

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## 4 Procurement Instructions

### 4.1 Pre-Proposal Conference

- 4.1.1 A pre-Proposal conference (Conference) will be held at the date, time, and location indicated on the Key Information Summary Sheet.
- 4.1.2 Attendance at the Conference is not mandatory, but all interested parties are encouraged to attend in order to facilitate better preparation of their Proposals.
- 4.1.3 Following the Conference, the attendance record and summary of the Conference will be distributed via the same mechanism described for amendments and questions (see **Section 4.2.1 eMM**).
- 4.1.4 Attendees should bring a copy of the solicitation and a business card to help facilitate the sign-in process.
- 4.1.5 In order to assure adequate seating and other accommodations at the Conference, please fax the Pre-Proposal Conference Response Form (**Attachment A**) no later than the time and date indicated on the form. In addition, if there is a need for sign language interpretation or other special accommodations due to a disability, please notify the Procurement Officer at least five (5) Business Days prior to the Conference date. The Department will make a reasonable effort to provide such special accommodation.

### 4.2 eMaryland Marketplace (eMM)

- 4.2.1 eMM is the electronic commerce system for the State of Maryland. The RFP, Conference summary and attendance sheet, Offerors' questions and the Procurement Officer's responses, addenda, and other solicitation-related information will be made available via eMM.
- 4.2.2 In order to receive a contract award, a vendor must be registered on eMM. Registration is free. Go to <https://emaryland.buyspeed.com/bsol/login.jsp>, click on "Register" to begin the process, and then follow the prompts.

### 4.3 Questions

- 4.3.1 All questions, including concerns regarding any applicable MBE or VSBE participation goals, shall identify in the subject line the Solicitation Number and Title (20-17375 – Behavioral Respite and Mobile Crisis Intervention Services), and shall be submitted in writing via e-mail to the Procurement Officer at least five (5) days prior to the Proposal due date. The Procurement Officer, based on the availability of time to research and communicate an answer, shall decide whether an answer can be given before the Proposal due date.
- 4.3.2 Answers to all questions that are not clearly specific only to the requestor will be distributed via the same mechanism as for RFP amendments, and posted on eMM.
- 4.3.3 The statements and interpretations contained in responses to any questions, whether responded to verbally or in writing, are not binding on the Department unless it issues an amendment in writing.

### 4.4 Procurement Method

A Contract will be awarded in accordance with the Competitive Sealed Proposals method under COMAR 21.05.03.



#### **4.5 Proposal Due (Closing) Date and Time**

- 4.5.1 Proposals, in the number and form set forth in **Section 5 Proposal Format**, must be received by the Procurement Officer no later than the Proposal due date and time indicated on the Key Information Summary Sheet in order to be considered.
- 4.5.2 Requests for extension of this date or time shall not be granted.
- 4.5.3 Offerors submitting Proposals should allow sufficient delivery time to ensure timely receipt by the Procurement Officer. Except as provided in COMAR 21.05.03.02.F and 21.05.02.10, Proposals received after the due date and time listed in the Key Information Summary Sheet will not be considered.
- 4.5.4 The date and time of an e-mail submission is determined by the date and time of arrival in the e-mail address indicated on the Key Information Summary Sheet.
- 4.5.5 Proposals may be modified or withdrawn by written notice received by the Procurement Officer before the time and date set forth in the Key Information Summary Sheet for receipt of Proposals.
- 4.5.6 Proposals may not be submitted by email or facsimile. Proposals will not be opened publicly.
- 4.5.7 Potential Offerors not responding to this solicitation are requested to submit the “Notice to Vendors” form, which includes company information and the reason for not responding (e.g., too busy, cannot meet mandatory requirements).

#### **4.6 Multiple or Alternate Proposals**

Multiple or alternate Proposals will not be accepted.

#### **4.7 Economy of Preparation**

Proposals should be prepared simply and economically and provide a straightforward and concise description of the Offeror’s Proposal to meet the requirements of this RFP.

#### **4.8 Public Information Act Notice**

- 4.8.1 The Offeror should give specific attention to the clear identification of those portions of its Proposal that it considers confidential and/or proprietary commercial information or trade secrets, and provide justification why such materials, upon request, should not be disclosed by the State under the Public Information Act, Md. Code Ann., General Provisions Article, Title 4 (See also RFP **Section 5.3.2.B** “Claim of Confidentiality”). This information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal and if applicable, separately in the Financial Proposal.
- 4.8.2 Offerors are advised that, upon request for this information from a third party, the Procurement Officer is required to make an independent determination whether the information must be disclosed.

#### **4.9 Award Basis**

A Contract shall be awarded to the responsible Offeror(s) submitting the Proposal that has been determined to be the most advantageous to the State, considering price and evaluation factors set forth in this RFP (see COMAR 21.05.03.03F), for providing the goods and services as specified in this RFP. As stated in Section 2.1.3, one Contract award will be made per Region. See RFP **Section 6** for further award information.

#### **4.10 Oral Presentation**

Offerors may be required to make oral presentations to State representatives. Oral presentations are considered part of the Technical Proposal. Offerors must confirm in writing any substantive oral clarification of, or change in, their Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Proposal. The Procurement Officer will notify Offerors of the time and place of oral presentations.

#### **4.11 Duration of Proposal**

Proposals submitted in response to this RFP are irrevocable for the latest of the following: 120 days following the Proposal due date and time, best and final offers if requested (see **Section 6.5.2**), or the date any protest concerning this RFP is finally resolved. This period may be extended at the Procurement Officer's request only with the Offeror's written agreement.

#### **4.12 Revisions to the RFP**

- 4.12.1 If the RFP is revised before the due date for Proposals, the Department shall post any addenda to the RFP on eMM and shall endeavor to provide such addenda to all prospective Offerors that were sent this RFP or are otherwise known by the Procurement Officer to have obtained this RFP. It remains the responsibility of all prospective Offerors to check eMM for any addenda issued prior to the submission of Proposals.
- 4.12.2 Acknowledgment of the receipt of all addenda to this RFP issued before the Proposal due date shall be included in the Transmittal Letter accompanying the Offeror's Technical Proposal.
- 4.12.3 Addenda made after the due date for Proposals will be sent only to those Offerors that remain under award consideration as of the issuance date of the addenda.
- 4.12.4 Acknowledgement of the receipt of addenda to the RFP issued after the Proposal due date shall be in the manner specified in the addendum notice.
- 4.12.5 Failure to acknowledge receipt of an addendum does not relieve the Offeror from complying with the terms, additions, deletions, or corrections set forth in the addendum, and may cause the Proposal to be deemed not reasonably susceptible of being selected for award.

#### **4.13 Cancellations**

- 4.13.1 The State reserves the right to cancel this RFP, accept or reject any and all Proposals, in whole or in part, received in response to this RFP, waive or permit the cure of minor irregularities, and conduct discussions with all qualified or potentially qualified Offerors in any manner necessary to serve the best interests of the State.
- 4.13.2 The State reserves the right, in its sole discretion, to award a Contract based upon the written Proposals received without discussions or negotiations.
- 4.13.3 In the event a government entity proposes and receives the recommendation for award, the procurement may be cancelled, and the award processed in accordance with COMAR 21.01.03.01.A(4).

#### **4.14 Incurred Expenses**

The State will not be responsible for any costs incurred by any Offeror in preparing and submitting a Proposal, in making an oral presentation, providing a demonstration, or performing any other activities related to submitting a Proposal in response to this solicitation.

#### 4.15 Protest/Disputes

Any protest or dispute related to this solicitation or the Contract award shall be subject to the provisions of COMAR 21.10 (Administrative and Civil Remedies).

#### 4.16 Offeror Responsibilities

- 4.16.1 Offerors must be able to provide all goods and services and meet all of the requirements requested in this solicitation and the successful Offeror shall be responsible for Contract performance including any subcontractor participation.
- 4.16.2 All subcontractors shall be identified and a complete description of their role relative to the Proposal shall be included in the Offeror's Proposal. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate Attachment(s) to this RFP (see **Section 4.26** "Minority Participation Goal" and **Section 4.27** "VSBE Goal").
- 4.16.3 If the Offeror is the subsidiary of another entity, all information submitted by the Offeror, including but not limited to references, financial reports, or experience and documentation (e.g. insurance policies, bonds, and letters of credit) used to meet minimum qualifications, if any, shall pertain exclusively to the Offeror, unless the parent organization will guarantee the performance of the subsidiary. If applicable, the Offeror's Proposal shall contain an explicit statement, signed by an authorized representative of the parent organization, stating that the parent organization will guarantee the performance of the subsidiary.
- 4.16.4 A parental guarantee of the performance of the Offeror under this Section will not automatically result in crediting the Offeror with the experience or qualifications of the parent under any evaluation criteria pertaining to the actual Offeror's experience and qualifications. Instead, the Offeror will be evaluated on the extent to which the State determines that the experience and qualifications of the parent are applicable to and shared with the Offeror, any stated intent by the parent to be directly involved in the performance of the Contract, and the value of the parent's participation as determined by the State.

#### 4.17 Acceptance of Terms and Conditions

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, shall be deemed to have accepted the terms and conditions of this RFP and the Contract, attached hereto as **Attachment M**. Any exceptions to this RFP or the Contract shall be clearly identified in the Executive Summary of the Technical Proposal. **All exceptions will be taken into consideration when evaluating the Offeror's Proposal. The Department reserves the right to accept or reject any exceptions.**

#### 4.18 Proposal Affidavit

A Proposal submitted by the Offeror must be accompanied by a completed Proposal Affidavit. A copy of this Affidavit is included as **Attachment C** of this RFP.

#### 4.19 Contract Affidavit

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete a Contract Affidavit. A copy of this Affidavit is included for informational purposes as **Attachment N** of this RFP. This Affidavit must be provided within five (5) Business Days of notification of recommended award. For purposes of completing Section "B" of this Affidavit (Certification

of Registration or Qualification with the State Department of Assessments and Taxation), a business entity that is organized outside of the State of Maryland is considered a “foreign” business.

#### **4.20 Compliance with Laws/Arrearages**

By submitting a Proposal in response to this RFP, the Offeror, if selected for award, agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations under the Contract.

By submitting a response to this solicitation, each Offeror represents that it is not in arrears in the payment of any obligations due and owing the State, including the payment of taxes and employee benefits, and shall not become so in arrears during the term of the Contract if selected for Contract award.

#### **4.21 Verification of Registration and Tax Payment**

Before a business entity can do business in the State, it must be registered with the State Department of Assessments and Taxation (SDAT). SDAT is located at State Office Building, Room 803, 301 West Preston Street, Baltimore, Maryland 21201. For registration information, visit

<https://www.egov.maryland.gov/businessexpress>.

It is strongly recommended that any potential Offeror complete registration prior to the Proposal due date and time. The Offeror’s failure to complete registration with SDAT may disqualify an otherwise successful Offeror from final consideration and recommendation for Contract award.

#### **4.22 False Statements**

Offerors are advised that Md. Code Ann., State Finance and Procurement Article, § 11-205.1 provides as follows:

4.22.1 In connection with a procurement contract a person may not willfully:

- A. Falsify, conceal, or suppress a material fact by any scheme or device.
- B. Make a false or fraudulent statement or representation of a material fact.
- C. Use a false writing or document that contains a false or fraudulent statement or entry of a material fact.

4.22.2 A person may not aid or conspire with another person to commit an act under **Section 4.22.1**.

4.22.3 A person who violates any provision of this section is guilty of a felony and on conviction is subject to a fine not exceeding \$20,000 or imprisonment not exceeding five (5) years or both.

#### **4.23 Payments by Electronic Funds Transfer**

By submitting a Proposal in response to this solicitation, the Offeror, if selected for award:

4.23.1 Agrees to accept payments by electronic funds transfer (EFT) unless the State Comptroller’s Office grants an exemption. Payment by EFT is mandatory for contracts exceeding \$200,000. The successful Offeror shall register using the COT/GAD X-10 Vendor Electronic Funds (EFT) Registration Request Form.

4.23.2 Any request for exemption must be submitted to the State Comptroller’s Office for approval at the address specified on the COT/GAD X-10 form, must include the business identification

information as stated on the form, and must include the reason for the exemption. The COT/GAD X-10 form may be downloaded from the Comptroller's website at:

[http://comptroller.marylandtaxes.com/Vendor\\_Services/Accounting\\_Information/Static\\_Files/GADX10Form20150615.pdf](http://comptroller.marylandtaxes.com/Vendor_Services/Accounting_Information/Static_Files/GADX10Form20150615.pdf).

#### **4.24 Prompt Payment Policy**

This procurement and the Contract(s) to be awarded pursuant to this solicitation are subject to the Prompt Payment Policy Directive issued by the Governor's Office of Small, Minority & Women Business Affairs (GOSBA) and dated August 1, 2008. Promulgated pursuant to Md. Code Ann., State Finance and Procurement Article, §§ 11-201, 13-205(a), and Title 14, Subtitle 3, and COMAR 21.01.01.03 and 21.11.03.01, the Directive seeks to ensure the prompt payment of all subcontractors on non-construction procurement contracts. The Contractor shall comply with the prompt payment requirements outlined in the Contract, Section 31 "Prompt Pay Requirements" (see **Attachment M**), should an MBE goal apply to this RFP. Additional information is available on GOSBA's website at:

<http://www.gomdsmlbiz.maryland.gov/documents/legislation/promptpaymentfaqs.pdf>.

#### **4.25 Electronic Procurements Authorized**

- 4.25.1 Under COMAR 21.03.05, unless otherwise prohibited by law, the Department may conduct procurement transactions by electronic means, including the solicitation, proposing, award, execution, and administration of a contract, as provided in Md. Code Ann., Maryland Uniform Electronic Transactions Act, Commercial Law Article, Title 21.
- 4.25.2 Participation in the solicitation process on a procurement contract for which electronic means has been authorized shall constitute consent by the Offeror to conduct by electronic means all elements of the procurement of that Contract which are specifically authorized under the solicitation or Contract. In the case of electronic transactions authorized by this RFP, electronic records and signatures by an authorized representative satisfy a requirement for written submission and signatures.
- 4.25.3 "Electronic means" refers to exchanges or communications using electronic, digital, magnetic, wireless, optical, electromagnetic, or other means of electronically conducting transactions. Electronic means includes facsimile, e-mail, internet-based communications, electronic funds transfer, specific electronic bidding platforms (e.g., <https://emaryland.buyspeed.com/bsa/>), and electronic data interchange.
- 4.25.4 In addition to specific electronic transactions specifically authorized in other sections of this solicitation (e.g., RFP § 4.23 describing payments by Electronic Funds Transfer), the following transactions are authorized to be conducted by electronic means on the terms as authorized in COMAR 21.03.05:
  - 4.25.4.1 The Procurement Officer may conduct the procurement using eMM or e-mail to issue:
    - (a) The RFP;
    - (b) Any amendments and requests for best and final offers;
    - (c) Pre-Proposal conference documents;
    - (d) Questions and responses;
    - (e) Communications regarding the solicitation or Proposal to any Offeror or potential Offeror;

- (f) Notices of award selection or non-selection; and
- (g) The Procurement Officer's decision on any Proposal protest or Contract claim.

4.25.4.2 The Offeror or potential Offeror may use e-mail to:

- (a) Ask questions regarding the solicitation;
- (b) Reply to any material received from the Procurement Officer by electronic means that includes a Procurement Officer's request or direction to reply by e-mail or facsimile, but only on the terms specifically approved and directed by the Procurement Officer and;
- (c) Submit a "No Proposal Response" to the RFP.

4.25.4.3 The Procurement Officer, the Contract Monitor, and the Contractor may conduct day-to-day Contract administration, except as outlined in **Section 4.25.5** of this subsection, utilizing e-mail, facsimile, or other electronic means if authorized by the Procurement Officer or Contract Monitor.

4.25.4.4 The following transactions related to this procurement and any Contract awarded pursuant to it are **not authorized** to be conducted by electronic means:

- A. Submission of initial Proposals;
- B. Filing of protests;
- C. Filing of Contract claims;
- D. Submission of documents determined by the Department to require original signatures (e.g., Contract execution, Contract modifications); or
- E. Any transaction, submission, or communication where the Procurement Officer has specifically directed that a response from the Contractor or Offeror be provided in writing or hard copy.

4.25.5 Any e-mail transmission is only authorized to the e-mail addresses for the identified person as provided in the solicitation, the Contract, or in the direction from the Procurement Officer or Contract Monitor.

## **4.26 MBE Participation Goal**

### **4.26.1 Establishment of Goal and Subgoals**

An overall MBE subcontractor participation goal as identified in the Key Information Summary Sheet has been established for this procurement, representing a percentage of the total Contract dollar value, including all renewal option terms, if any, has been established for this procurement.

Notwithstanding any subgoals established for this RFP, the Contractor is encouraged to use a diverse group of subcontractors and suppliers from any/all of the various MBE classifications to meet the remainder of the overall MBE participation goal.

By submitting a response to this solicitation, the Offeror acknowledges the overall MBE subcontractor participation goal and subgoals, and commits to achieving the overall goal and subgoals by utilizing certified minority business enterprises, or requests a full or partial waiver of the overall goal and subgoals.

**An Offeror that does not commit to meeting the entire MBE participation goal outlined in this Section 4.26 must submit a request for waiver with its proposal submission that is supported by good faith efforts documentation to meet the MBE goal made prior to submission of its proposal as outlined in**



**Attachment D-1B, Waiver Guidance. Failure of an Offeror to properly complete, sign, and submit Attachment D-1A at the time it submits its Technical Response(s) to the RFP will result in the State's rejection of the Offeror's Proposal for the applicable Service Category. This failure is not curable.**

**4.26.2 Attachments.**

- A. D-1 to D-5 – The following Minority Business Enterprise participation instructions, and forms are provided to assist Offerors:
1. Attachment D-1A MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (must be submitted with Proposal)
  2. Attachment D-1B Waiver Guidance
  3. Attachment D-1C Good Faith Efforts Documentation to Support Waiver Request
  4. Attachment D-2 Outreach Efforts Compliance Statement
  5. Attachment D-3A MBE Subcontractor Project Participation Certification
  6. Attachment D-3B MBE Prime Project Participation Certification
  7. Attachment D-4A Prime Contractor Paid/Unpaid MBE Invoice Report
  8. Attachment D-4B MBE Prime Contractor Report
  9. Attachment D-5 Subcontractor Paid/Unpaid MBE Invoice Report
- B. The Offeror shall include with its Proposal a completed MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) whereby:
1. The Offeror acknowledges the certified MBE participation goal and commits to make a good faith effort to achieve the goal and any applicable subgoals, or requests a waiver, and affirms that MBE subcontractors were treated fairly in the solicitation process; and
  2. The Offeror responds to the expected degree of MBE participation, as stated in the solicitation, by identifying the specific commitment of certified MBEs at the time of Proposal submission. The Offeror shall specify the percentage of total contract value associated with each MBE subcontractor identified on the MBE participation schedule, including any work performed by the MBE prime (including a prime participating as a joint venture) to be counted towards meeting the MBE participation goals.
  3. The Offeror requesting a waiver should review **Attachment D-1B** (Waiver Guidance) and **D-1C** (Good Faith Efforts Documentation to Support Waiver Request) prior to submitting its request.

***If the Offeror fails to submit a completed Attachment D-1A with the Proposal as required, the Procurement Officer shall determine that the Proposal is not reasonably susceptible of being selected for award.***

- 4.26.3 Offerors are responsible for verifying that each MBE (including any MBE prime and MBE prime participating in a joint venture) selected to meet the goal and any subgoals and subsequently identified in **Attachment D-1A** is appropriately certified and has the correct NAICS codes allowing it to perform the committed work.



- 4.26.4 Within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, the Offeror must provide the following documentation to the Procurement Officer.
- A. Outreach Efforts Compliance Statement (**Attachment D-2**);
  - B. MBE Subcontractor/Prime Project Participation Certification (**Attachment D-3A/3B**); and
  - C. Any other documentation required by the Procurement Officer to ascertain Offeror responsibility in connection with the certified MBE subcontractor participation goal or any applicable subgoals.

Further, if the recommended awardee believes a waiver (in whole or in part) of the overall MBE goal or of any applicable subgoal is necessary, the recommended awardee must submit a fully-documented waiver request that complies with COMAR 21.11.03.11.

*If the recommended awardee fails to return each completed document within the required time, the Procurement Officer may determine that the recommended awardee is not responsible and, therefore, not eligible for Contract award. If the Contract has already been awarded, the award is voidable.*

- 4.26.5 A current directory of certified MBEs is available through the Maryland State Department of Transportation (MDOT), Office of Minority Business Enterprise, 7201 Corporate Center Drive, Hanover, Maryland 21076. The phone numbers are (410) 865-1269, 1-800-544-6056, or TTY (410) 865-1342. The directory is also available on the MDOT website at <http://mbe.mdot.maryland.gov/directory/>. The most current and up-to-date information on MBEs is available via this website. **Only MDOT-certified MBEs may be used to meet the MBE subcontracting goals.**
- 4.26.6 The Offeror that requested a waiver of the goal or any of the applicable subgoals will be responsible for submitting the Good Faith Efforts Documentation to Support Waiver Request (**Attachment D-1C**) and all documentation within ten (10) Business Days from notification that it is the recommended awardee or from the date of the actual award, whichever is earlier, as required in COMAR 21.11.03.11.
- 4.26.7 All documents, including the MBE Utilization and Fair Solicitation Affidavit & MBE Participation Schedule (**Attachment D-1A**), completed and submitted by the Offeror in connection with its certified MBE participation commitment shall be considered a part of the Contract and are hereby expressly incorporated into the Contract by reference thereto. All of the referenced documents will be considered a part of the Proposal for order of precedence purposes (see Contract – **Attachment M, Section 2.1**).
- 4.26.8 The Offeror is advised that liquidated damages will apply in the event the Contractor fails to comply in good faith with the requirements of the MBE program and pertinent Contract provisions. (See Contract – **Attachment M, Liquidated Damages for MBE, Section 39**).
- 4.26.9 As set forth in COMAR 21.11.03.12-1(D), when a certified MBE firm participates on a contract as a prime contractor (including a joint-venture where the MBE firm is a partner), a procurement agency may count the distinct, clearly defined portion of the work of the contract that the certified MBE firm performs with its own work force towards fulfilling up to fifty-percent (50%) of the MBE participation goal (overall) and up to one hundred percent (100%) of not more than one of the MBE participation subgoals, if any, established for the contract.

In order to receive credit for self-performance, an MBE prime must list its firm in Section 4A of the MBE Participation Schedule (**Attachment D-1A**) and include information regarding the work it will self-perform. For the remaining portion of the overall goal and the subgoals, the MBE prime must also identify other certified MBE subcontractors [see Section 4B of the MBE Participation

Schedule (**Attachment D-1A**)] used to meet those goals. If dually-certified, the MBE prime can be designated as only one of the MBE subgoal classifications but can self-perform up to 100% of the stated subgoal.

As set forth in COMAR 21.11.03.12-1, once the Contract work begins, the work performed by a certified MBE firm, including an MBE prime, can only be counted towards the MBE participation goal(s) if the MBE firm is performing a commercially useful function on the Contract. Refer to MBE forms (**Attachment D**) for additional information.

#### **4.27 VSBE Goal**

There is no VSBE participation goal for this procurement.

#### **4.28 Living Wage Requirements**

- A. Maryland law requires that contractors meeting certain conditions pay a living wage to covered employees on State service contracts over \$100,000. Maryland Code Ann., State Finance and Procurement Article, § 18-101 et al. The Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation requires that a contractor subject to the Living Wage law submit payroll records for covered employees and a signed statement indicating that it paid a living wage to covered employees; or receive a waiver from Living Wage reporting requirements. See COMAR 21.11.10.05.
- B. If subject to the Living Wage law, Contractor agrees that it will abide by all Living Wage law requirements, including but not limited to reporting requirements in COMAR 21.11.10.05. Contractor understands that failure of Contractor to provide such documents is a material breach of the terms and conditions and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions. Information pertaining to reporting obligations may be found by going to the Maryland Department of Labor, Licensing and Regulation (DLLR) website <http://www.dllr.state.md.us/labor/prev/livingwage.shtml>.
- C. Additional information regarding the State's living wage requirement is contained in **Attachment F**. Offerors must complete and submit the Maryland Living Wage Requirements Affidavit of Agreement (**Attachment F-1**) with their Proposals. If the Offeror fails to complete and submit the required documentation, the State may determine the Offeror to not be responsible under State law.
- D. Contractors and subcontractors subject to the Living Wage Law shall pay each covered employee at least the minimum amount set by law for the applicable Tier area. The specific living wage rate is determined by whether a majority of services take place in a Tier 1 Area or a Tier 2 Area of the State. The specific Living Wage rate is determined by whether a majority of services take place in a Tier 1 Area or Tier 2 Area of the State.
  - 1) The Tier 1 Area includes Montgomery, Prince George's, Howard, Anne Arundel, and Baltimore Counties, and Baltimore City. The Tier 2 Area includes any county in the State not included in the Tier 1 Area. In the event that the employees who perform the services are not located in the State, the head of the unit responsible for a State Contract pursuant to §18-102(d) of the State Finance and Procurement Article shall assign the tier based upon where the recipients of the services are located.
  - 2) The Contract will be determined to be a Tier 1 Contract or a Tier 2 Contract depending on the location(s) from which the Contractor provides 50% or more of the services. The Offeror must identify in its Proposal the location(s) from which services will be provided, including the location(s) from which 50% or more of the Contract services will be provided.

- 3) If the Contractor provides 50% or more of the services from a location(s) in a Tier 1 jurisdiction(s) the Contract will be a Tier 1 Contract. The Contracts for The Central and Southern Regions will each be a Tier 1 contract.
  - 4) If the Contractor provides 50% or more of the services from a location(s) in a Tier 2 jurisdiction(s), the Contract will be a Tier 2 Contract. The Contracts for the Eastern and Western Regions will each be a Tier 2 contract.
- E. **NOTE:** Whereas the Living Wage may change annually, the Contract price will not change because of a Living Wage change.

#### **4.29 Federal Funding Acknowledgement**

- 4.29.1 There are programmatic conditions that apply to the Contract due to federal funding (see **Attachment G**).
- 4.29.2 The total amount of federal funds allocated for the DDA is \$ 4,932,480.00 in Maryland State fiscal year 2019. This represents 44.8% of all funds budgeted for the unit in that fiscal year. This does not necessarily represent the amount of funding available for any particular grant, contract, or solicitation.
- 4.29.3 The Contract contains federal funds. The source of these federal funds is: Medicaid. The CFDA number is: 93-778. The conditions that apply to all federal funds awarded by the Department are contained in Federal Funds **Attachment G**. Any additional conditions that apply to this particular federally-funded contract are contained as supplements to Federal Funds **Attachment G** and Offerors are to complete and submit these Attachments with their Proposals as instructed in the Attachments. Acceptance of this agreement indicates the Offeror's intent to comply with all conditions, which are part of the Contract.

#### **4.30 Conflict of Interest Affidavit and Disclosure**

- 4.30.1 The Offeror shall complete and sign the Conflict of Interest Affidavit and Disclosure (**Attachment H**) and submit it with its Proposal.
- 4.30.3 Additionally, a Contractor has an ongoing obligation to ensure that all Contractor Personnel are without conflicts of interest prior to providing services under the Contract. For policies and procedures applying specifically to Conflict of Interests, the Contract is governed by COMAR 21.05.08.08.
- 4.30.4 Participation in Drafting of Specifications: Disqualifying Event: Offerors are advised that Md. Code Ann. State Finance and Procurement Article §13-212.1(a) provides generally that "an individual who assists an executive unit in the drafting of specifications, an invitation for bids, a request for proposals for a procurement, or the selection or award made in response to an invitation for bids or a request for proposals, or a person that employs the individual, may not: (1) submit a bid or proposal for that procurement; or (2) assist or represent another person, directly or indirectly, who is submitting a bid or proposal for that procurement." Any Offeror submitting a Proposal in violation of this provision shall be classified as "not responsible." See COMAR 21.05.03.03.

#### **4.31 Non-Disclosure Agreement**

- 4.30.2 By submitting a Conflict of Interest Affidavit and Disclosure, the Contractor shall be construed as certifying all Contractor Personnel and subcontractors are also without a conflict of interest as defined in COMAR 21.05.08.08A.

#### **4.31.1 Non-Disclosure Agreement (Offeror)**

A Non-Disclosure Agreement (Offeror) is not required for this procurement.

#### **4.31.2 Non-Disclosure Agreement (Contractor)**

All Offerors are advised that this solicitation and any Contract(s) are subject to the terms of the Non-Disclosure Agreement (NDA) contained in this solicitation as **Attachment I**. This Agreement must be provided within five (5) Business Days of notification of recommended award; however, to expedite processing, it is suggested that this document be completed and submitted with the Proposal.

### **4.32 HIPAA - Business Associate Agreement**

Based on the determination by the Department that the functions to be performed in accordance with this solicitation constitute Business Associate functions as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the recommended awardee shall execute a Business Associate Agreement as required by HIPAA regulations at 45 C.F.R. §164.500 *et seq.* and set forth in **Attachment J**. This Agreement must be provided within five (5) Business Days of notification of proposed Contract award. However, to expedite processing, it is suggested that this document be completed and submitted with the Proposal. Should the Business Associate Agreement not be submitted upon expiration of the five (5) Business Day period as required by this solicitation, the Procurement Officer, upon review of the Office of the Attorney General and approval of the Secretary, may withdraw the recommendation for award and make the award to the responsible Offeror with the next highest overall-ranked Proposal.

### **4.33 Nonvisual Access**

This solicitation does not contain Information Technology (IT) provisions requiring Nonvisual Access.

### **4.34 Mercury and Products That Contain Mercury**

This solicitation does not include the procurement of products known to likely include mercury as a component.

### **4.35 Location of the Performance of Services Disclosure**

The Offeror is required to complete the Location of the Performance of Services Disclosure. A copy of this Disclosure is included as **Attachment L**. The Disclosure must be provided with the Proposal.

### **4.36 Department of Human Services (DHS) Hiring Agreement**

This solicitation does not require a DHS Hiring Agreement.

### **4.37 Small Business Reserve (SBR) Procurement**

This solicitation is not designated as a Small Business Reserve (SBR) Procurement.

### **4.38 Maryland Healthy Working Families Act Requirements**

On February 11, 2018, the Maryland Healthy Working Families Act went into effect. All offerors should be aware of how this Act could affect your potential contract award with the State of Maryland. See the Department of Labor, Licensing and Regulations web site for Maryland Healthy Working Families Act Information: <http://dllr.maryland.gov/paidleave/>.

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## 5 Proposal Format

### 5.1 Two Part Submission

Offerors shall submit Proposals in separate volumes:

- Volume I –Technical Proposal
- Volume II – Financial Proposal

### 5.2 Proposal Delivery and Packaging

- 5.2.1 Proposals delivered by facsimile and e-mail shall not be considered.
- 5.2.2 Provide no pricing information in the Technical Proposal. Provide no pricing information on the media submitted in the Technical Proposal.
- 5.2.3 Offerors may submit Proposals by hand or by mail as described below to the address provided in the Key Information Summary Sheet.
  - A. Any Proposal received at the appropriate mailroom, or typical place of mail receipt, for the respective procuring unit by the time and date listed in the RFP will be deemed to be timely. The State recommends a delivery method for which both the date and time of receipt can be verified.
  - B. For hand-delivery, Offerors are advised to secure a dated, signed, and time-stamped (or otherwise indicated) receipt of delivery. Hand-delivery includes delivery by commercial carrier acting as agent for the Offeror.
- 5.2.4 The Procurement Officer must receive all Proposal material by the RFP due date and time specified in the Key Information Summary Sheet. Requests for extension of this date or time will not be granted. Except as provided in COMAR 21.05.03.02F, Proposals received by the Procurement Officer after the due date will not be considered.
- 5.2.5 Offerors shall provide their Proposals in two separately sealed and labeled packages as follows:
  - A. Volume I - Technical Proposal consisting of:
    - 1) One (1) original executed Technical Proposal and all supporting material marked and sealed,
    - 2) four (4) duplicate copies of the above separately marked and sealed,
    - 3) an electronic version of the Technical Proposal in Microsoft Word format, version 2007 or greater,
    - 4) the Technical Proposal in searchable Adobe PDF format, and
    - 5) a second searchable Adobe PDF copy of the Technical Proposal with confidential and proprietary information redacted (see **Section 4.8**).
  - B. Volume II - Financial Proposal consisting of:
    - 1) One (1) original executed Financial Proposal and all supporting material marked and sealed,
    - 2) four (4) duplicate copies of the above separately marked and sealed,
    - 3) an electronic version of the Financial Proposal in searchable Adobe PDF format, and.

- 4) a second searchable Adobe pdf copy of the Financial Proposal, with confidential and proprietary information redacted (see **Section 4.8**).
- 5.2.6 Affix the following to the outside of each sealed Proposal. Include the name, email address, and telephone number of a contact person for the Offeror to be included on the outside of the packaging for each volume. Unless the resulting package will be too unwieldy, the State's preference is for the separately sealed Technical and Financial Proposals to be submitted together in a single package to the Procurement Officer and including a label bearing:
  - RFP title and number,
  - Name and address of the Offeror, and
  - Closing date and time for receipt of Proposals.
- 5.2.7 Label each electronic media (CD, DVD, or flash drive) on the outside with the RFP title and number, name of the Offeror, and volume number. Electronic media must be packaged with the original copy of the appropriate Proposal (Technical or Financial).

### **5.3 Volume I - Technical Proposal**

**NOTE:** Omit all **pricing information** from the Technical Proposal (Volume I). Include pricing information only in the Financial Proposal (Volume II).

- 5.3.1 In addition to the instructions below, responses in the Offeror's Technical Proposal shall reference the organization and numbering of Sections in the RFP (e.g., "Section 2.2.1 Response . . ."; "Section 2.2.2 Response . . ."). All pages of both Proposal volumes shall be consecutively numbered from beginning (Page 1) to end (Page "x").
- 5.3.2 The Technical Proposal shall include the following documents and information in the order specified as follows. Each section of the Technical Proposal shall be separated by a TAB as detailed below:
  - A. Title Page and Table of Contents (Submit under TAB A)

The Technical Proposal should begin with a Title Page bearing the name and address of the Offeror and the name and number of this RFP. A Table of Contents shall follow the Title Page for the Technical Proposal, organized by section, subsection, and page number.
  - B. Claim of Confidentiality (If applicable, submit under TAB A-1)

Any information which is claimed to be confidential and/or proprietary information should be identified by page and section number and placed after the Title Page and before the Table of Contents in the Technical Proposal, and if applicable, separately in the Financial Proposal. An explanation for each claim of confidentiality shall be included (see **Section 4.8 "Public Information Act Notice"**). The entire Proposal cannot be given a blanket confidentiality designation - any confidentiality designation must apply to specific sections, pages, or portions of pages of the Proposal and an explanation for each claim shall be included.
  - C. Offeror Information Sheet and Transmittal Letter (Submit under TAB B)

The Offeror Information Sheet (see **Appendix 2**) and a Transmittal Letter shall accompany the Technical Proposal. The purpose of the Transmittal Letter is to transmit the Proposal and acknowledge the receipt of any addenda to this RFP issued before the Proposal due date and time. Transmittal Letter should be brief, be signed by an individual who is authorized to commit the Offeror to its Proposal and the requirements as stated in this RFP.



**D. Executive Summary (Submit under TAB C)**

The Offeror shall condense and highlight the contents of the Technical Proposal in a separate section titled “Executive Summary.”

In addition, the Summary shall indicate whether the Offeror is the subsidiary of another entity, and if so, whether all information submitted by the Offeror pertains exclusively to the Offeror. If not, the subsidiary Offeror shall include a guarantee of performance from its parent organization as part of its Executive Summary (see **Section 4.16 “Offeror Responsibilities”**).

The Executive Summary shall also identify any exceptions the Offeror has taken to the requirements of this RFP, the Contract (**Attachment M**), or any other exhibits or attachments. Acceptance or rejection of exceptions is within the sole discretion of the State. **Exceptions to terms and conditions, including requirements, may result in having the Proposal deemed unacceptable or classified as not reasonably susceptible of being selected for award.**

**E. Minimum Qualifications Documentation (If applicable, Submit under TAB D)**

The Offeror shall submit any Minimum Qualifications documentation that may be required, as set forth in RFP **Section 1**. If references are required in **RFP Section 1**, those references shall be submitted in this section and shall contain the information described in both **Section 1** and **Section 5.3.2.I**.

**F. Offeror Technical Response to RFP Requirements and Proposed Work Plan (Submit under TAB E)**

- 1) The Offeror shall address each RFP requirement (RFP **Section 2** and **Section 3**) in its Technical Proposal with a cross reference to the requirement and describe how its proposed goods and services, including the goods and services of any proposed subcontractor(s), will meet or exceed the requirement(s). If the State is seeking Offeror agreement to any requirement(s), the Offeror shall state its agreement or disagreement. Any paragraph in the Technical Proposal that responds to an RFP requirement shall include an explanation of how the work will be performed. The response shall address each requirement in **Section 2** and **Section 3** in order, and shall contain a cross reference to the requirement.
- 2) Any exception to a requirement, term, or condition may result in having the Proposal classified as not reasonably susceptible of being selected for award or the Offeror deemed not responsible.
- 3) The Offeror shall give a definitive section-by-section description of the proposed plan to meet the requirements of the RFP, i.e., a Work Plan. The Work Plan shall include the specific methodology, techniques, and number of staff, if applicable, to be used by the Offeror in providing the required goods and services as outlined in RFP **Section 2**, Contractor Requirements: Scope of Work. The description shall include an outline of the overall management concepts employed by the Offeror and a project management plan, including project control mechanisms and overall timelines. Project deadlines considered contract deliverables must be recognized in the Work Plan. Offerors should ensure that this description includes how the Offeror will:
  - a) Ensure that all Start-Up activities are timely and properly performed.
  - i) Draft quarterly and annual report formats within 15 days after the NTP Date. (See 2.3.1.4.)



- ii) Details of how it will respond to a MCIS request no less than 20 days prior to the NTP Date. (See 2.3.3.1.1.A.2.)
  - iii) List of the entities to whom MCIS information was provided no less than three days prior to the NTP Date. (See 2.3.3.1.1.A.3.)
  - iv) Provide a Crisis Behavioral Assessment instrument no less than 20 days prior to the NTP Date. (See 2.3.3.1.1.C.)
  - v) Provide the procedure for delivering Targeted Therapeutic Staff no less than 2 weeks prior to the NTP Date. (See 2.3.3.2.)
  - vi) Submit all details of the information to be retained in the Contractor On-Line Information Database, the software program to be used, how State personnel can gain unlimited, at-will access, and how the contained information will be searchable, no less than 20 days prior to the NTP Date. (See 2.4.2.)
  - vii) Commit to attending a kickoff meeting within 15 days after the NTP Date, to include detailing Work Plan details that did not have to be submitted prior to the NTP Date. (See 3.1.C.)
- b) Ensure that all staff are properly trained. (See 2.3.1.2.)
  - c) Evaluate the performance of its staff. (See 2.3.1.3.)
  - d) Ensure an eligibility determination is made within 10 Business Days of a referral. (See 2.3.2.1.B.)
  - e) Ensure that it can simultaneously provide BRS to at least the number of individuals listed in Section 2.3.2.2.2. C for each Region it proposes to serve, or a greater specified number of individuals it commits to serve.
  - f) Develop and maintain relationships with mental health providers, local health department and hospitals. (See 2.3.2.2.1.A.)
  - g) Provide separate locations and services for children and adults. (See 2.3.2.2.1.B.)
  - h) Ensure that a treatment plan is developed within 24 hours of the admission of an individual and reviewed and updated weekly. (See 2.3.2.2.5.A.)
  - i) Ensure that a transition plan is developed within 48 hours of admission and reviewed and updated weekly. (See 2.3.2.2.5.B.)
  - j) Ensure a long-term services plan is developed within five days of admission of an individual. (See 2.3.2.2.5.G.)
  - k) Ensure that a Fading Plan is developed by the Tuesday after admission (or the same day for a Tuesday admission) and updated weekly. (See 2.3.2.2.5.H.)
  - l) Record all challenging behavioral data on an ongoing basis and provide such data in a graphed format weekly. (See 2.3.2.2.5.J.)
  - m) Provide 24 hour a day, 7 day a week contact availability to receive Mobile Crisis Intervention requests. (See 2.3.3.1.1.A.)
  - n) Respond in-person with a licensed clinician to a Mobile Crisis situation at the location of the individual in crisis within three hours of notification. (See 2.3.3.1.2.B.)

- o) Be able to provide Targeted Therapeutic Staff on-site with a caregiver in a timely manner. (See 2.3.3.2.)
  - p) Ensure the completion of a Behavioral Crisis Assessment and posting to the Regional office email address within 24 hours of an intervention. (See 2.3.3.1.2.d and f.)
  - q) Ensure the provision of Targeted Therapeutic Staff other than as required in 2.3.3.1.2.c. (See 2.3.3.2.)
  - r) Ensure the proper development and maintenance of an on-line information database. (See 2.4.)
  - s) Ensure that all required information is provided in weekly reports, including how detailed contract financial information will be calculated and provided. (See 2.5.1.1.3)
  - t) Ensure compliance with all End of Contract Transition requirements. (See 3.2.)
  - u) Comply with all personnel requirements in Section 3.10.
  - v) Describe the Quality Assurance Measures (procedures, tools and staff) that the Offeror will use to ensure that it satisfies all the requirements of the Contract, especially the items described in Section 2.5.1.3.2.2 and 2.6.
- 4) The Offeror shall identify the location(s) from which it proposes to provide services, including, if applicable, any current facilities that it operates, and any required construction to satisfy the State's requirements as outlined in this RFP. State whether each potentially available location is owned, leased or rented by the Offeror or by a subcontractor and describe how the location(s) is suitable to treat individuals with challenging behaviors. (See 2.3.2.2.B.)
- 5) The Offeror shall provide a draft Problem Escalation Procedure (PEP) that includes, at a minimum, titles of individuals to be contacted by the Contract Monitor should problems arise under the Contract and explains how problems with work under the Contract will be escalated in order to resolve any issues in a timely manner. Final procedures shall be submitted as indicated in **Section 3.8**.
- 6) The Offeror must submit a draft Crisis Behavioral Assessment instrument (protocol, format, process, etc.).
- G. Experience and Qualifications of Proposed Staff (Submit under TAB F)  
The Offeror shall identify the qualifications and types of staff proposed to be utilized under the Contract including information in support of the Personnel Requirements criteria in **Section 3.10**. Specifically, the Offeror shall:
  - 1) Describe in detail how the proposed staff's experience and qualifications relate to their specific responsibilities, including any staff of proposed subcontractor(s), as detailed in the Work Plan.
  - 2) Include individual resumes for Key Personnel, including Key Personnel for any proposed subcontractor(s), who are to be assigned to the project if the Offeror is awarded the Contract. Each resume should include the amount of experience the individual has had relative to the Scope of Work set forth in this solicitation.

- 3) Include letters of intended commitment to work on the project, including letters from any proposed subcontractor(s). Offerors should be aware of restrictions on substitution of Key Personnel prior to RFP award.
- 4) Provide an Organizational Chart outlining Personnel and their related duties. The Offeror shall include job titles and the percentage of time each individual will spend on his/her assigned tasks. Offerors using job titles other than those commonly used by industry standards must provide a crosswalk reference document.

**H. Offeror Qualifications and Capabilities (Submit under TAB G)**

The Offeror shall include information on past experience with similar projects and services. The Offeror shall describe how its organization can meet the requirements of this RFP and shall also include the following information:

- 1) The number of years the Offeror has provided the similar goods and services;
- 2) The number of clients/customers and geographic locations that the Offeror currently serves;
- 3) The names and titles of headquarters or Regional management personnel who may be involved with supervising the services to be performed under the Contract;
- 4) The Offeror's process for resolving billing errors; and
- 5) An organizational chart that identifies the complete structure of the Offeror including any parent company, headquarters, Regional offices, and subsidiaries of the Offeror.

**I. References (Submit under TAB H)**

At least three (3) references are requested from customers who are capable of documenting the Offeror's ability to provide the goods and services specified in this RFP. References used to meet any Minimum Qualifications (see **RFP Section 1**) may be used to meet this request. Each reference shall be from a client for whom the Offeror has provided goods and services within the past five (5) years and shall include the following information:

- 1) Name of client organization;
- 2) Name, title, telephone number, and e-mail address, if available, of point of contact for client organization; and
- 3) Value, type, duration, and description of goods and services provided.

The Department reserves the right to request additional references or utilize references not provided by the Offeror. Points of contact must be accessible and knowledgeable regarding Offeror performance.

**J. List of Current or Prior State Contracts (Submit under TAB I)**

Provide a list of all contracts with any entity of the State of Maryland for which the Offeror is currently performing goods and services or for which services have been completed within the last five (5) years. For each identified contract, the Offeror is to provide:

- 1) The State contracting entity;
- 2) A brief description of the goods and services provided;
- 3) The dollar value of the contract;
- 4) The term of the contract;

- 5) The State employee contact person (name, title, telephone number, and, if possible, e-mail address); and
- 6) Whether the contract was terminated before the end of the term specified in the original contract, including whether any available renewal option was not exercised.

Information obtained regarding the Offeror's level of performance on State contracts will be used by the Procurement Officer to determine the responsibility of the Offeror and considered as part of the experience and past performance evaluation criteria of the RFP.

**K. Financial Capability (Submit under TAB J)**

The Offeror must include in its Proposal a commonly-accepted method to prove its fiscal integrity. If available, the Offeror shall include Financial Statements, preferably a Profit and Loss (P&L) statement and a Balance Sheet, for the last two (2) years (independently audited preferred).

In addition, the Offeror may supplement its response to this Section by including one or more of the following with its response:

- 1) Dun & Bradstreet Rating;
- 2) Standard and Poor's Rating;
- 3) Lines of credit;
- 4) Evidence of a successful financial track record; and
- 5) Evidence of adequate working capital.

**L. Certificate of Insurance (Submit under TAB K)**

The Offeror shall provide a copy of its current certificate of insurance showing the types and limits of insurance in effect as of the Proposal submission date. The current insurance types and limits do not have to be the same as described in **Section 3.6**. See **Section 3.6** for the required insurance certificate submission for the apparent awardee.

**M. Subcontractors (Submit under TAB L)**

The Offeror shall provide a complete list of all subcontractors that will work on the Contract if the Offeror receives an award, including those utilized in meeting the MBE and VSBE subcontracting goal(s), if applicable. This list shall include a full description of the duties each subcontractor will perform and why/how each subcontractor was deemed the most qualified for this project. If applicable, subcontractors utilized in meeting the established MBE or VSBE participation goal(s) for this solicitation shall be identified as provided in the appropriate attachment(s) of this RFP.

**N. Legal Action Summary (Submit under TAB M)**

**I. This summary shall include:**

- 1) A statement as to whether there are any outstanding legal actions or potential claims against the Offeror and a brief description of any action;
- 2) A brief description of any settled or closed legal actions or claims against the Offeror over the past five (5) years;
- 3) A description of any judgments against the Offeror within the past five (5) years, including the court, case name, complaint number, and a brief description of the final ruling or determination; and

- 4) In instances where litigation is ongoing and the Offeror has been directed not to disclose information by the court, provide the name of the judge and location of the court.
- II. If an Offeror responds to this TAB with a generic statement such as, “See 10K” or “See SEC filing”:
- 1) The referenced document must be included in the Technical Proposal
  - 2) The location within the document where the requested information can be found should be specifically noted
  - 3) The information contained in the indicated section should be responsive to the information requested under this TAB. A generic statement in the document to the effect that there often are what might be called nuisance lawsuits filed against the Offeror will only be sufficient if it is a true statement. i.e., the Offeror is asserting that in its opinion no lawsuit filed against it is noteworthy.
- O. Economic Benefit Factors (Submit under TAB N)
- 1) The Offeror shall submit with its Proposal a narrative describing benefits that will accrue to the Maryland economy as a direct or indirect result of its performance of the Contract. Proposals will be evaluated to assess the benefit to Maryland’s economy specifically offered. The economic benefit offered should be consistent with the Offeror’s Total Proposal Price from **Attachment B**, the Financial Proposal Form. See COMAR 21.05.03.03A (3).
  - 2) Proposals that identify specific benefits as being contractually enforceable commitments will be rated more favorably than Proposals that do not identify specific benefits as contractual commitments, all other factors being equal.
  - 3) Offerors shall identify any performance guarantees that will be enforceable by the State if the full level of promised benefit is not achieved during the Contract term.
  - 4) As applicable, for the full duration of the Contract, including any renewal period, or until the commitment is satisfied, the Contractor shall provide to the Procurement Officer or other designated agency personnel reports of the actual attainment of each benefit listed in response to this section. These benefit attainment reports shall be provided quarterly, unless elsewhere in these specifications a different reporting frequency is stated.
  - 5) In responding to this section, the following do not generally constitute economic benefits to be derived from the Contract:
    - a) generic statements that the State will benefit from the Offeror’s superior performance under the Contract;
    - b) descriptions of the number of Offeror employees located in Maryland other than those that will be performing work under the Contract; or
    - c) tax revenues from Maryland-based employees or locations, other than those that will be performing, or used to perform, work under the Contract.
  - 6) Discussion of Maryland-based employees or locations may be appropriate if the Offeror makes some projection or guarantee of increased or retained presence based upon being awarded the Contract.

- 7) Examples of economic benefits to be derived from a contract may include any of the following. For each factor identified below, identify the specific benefit and contractual commitments and provide a breakdown of expenditures in that category:
  - a) The Contract dollars to be recycled into Maryland's economy in support of the Contract, through the use of Maryland subcontractors, suppliers and joint venture partners. **Do not include actual fees or rates paid to subcontractors or information from your Financial Proposal;**
  - b) The number and types of jobs for Maryland residents resulting from the Contract. Indicate job classifications, number of employees in each classification and the aggregate payroll to which the Offeror has committed, including contractual commitments at both prime and, if applicable, subcontract levels; and whether Maryland employees working at least 30 hours per week and are employed at least 120 days during a 12-month period will receive paid leave. If no new positions or subcontracts are anticipated as a result of the Contract, so state explicitly;
  - c) Tax revenues to be generated for Maryland and its political subdivisions as a result of the Contract. Indicate tax category (sales taxes, payroll taxes, inventory taxes and estimated personal income taxes for new employees). Provide a forecast of the total tax revenues resulting from the Contract;
  - d) Subcontract dollars committed to Maryland small businesses and MBEs; and
  - e) Other benefits to the Maryland economy which the Offeror promises will result from awarding the Contract to the Offeror, including contractual commitments. Describe the benefit, its value to the Maryland economy, and how it will result from, or because of the Contract award. Offerors may commit to benefits that are not directly attributable to the Contract, but for which the Contract award may serve as a catalyst or impetus.

**P. Technical Proposal - Required Forms and Certifications (Submit under TAB O)**

- 1) All forms required for the Technical Proposal are identified in Table 1 of **Section 7** – RFP Attachments and Appendices. Unless directed otherwise by instructions within an individual form, complete, sign, and include all required forms in the Technical Proposal, under TAB O.
- 2) Offerors shall furnish any and all agreements and terms and conditions the Offeror expects the State to sign or to be subject to in connection with or in order to use the Offeror's services under this Contract. This includes physical copies of all agreements referenced and incorporated in primary documents, including but not limited to any software licensing agreement for any software proposed to be licensed to the State under this Contract (e.g., EULA, Enterprise License Agreements, Professional Service agreement, Master Agreement) and any AUP. The State does not agree to terms and conditions not provided in an Offeror's Technical Proposal and no action of the State, including but not limited to the use of any such software, shall be deemed to constitute acceptance of any such terms and conditions. Failure to comply with this section renders any such agreement unenforceable against the State.
- 3) For each service, hardware or software proposed as furnished by a third-party entity, Offeror must identify the third-party provider and provide a letter of authorization or such other documentation demonstrating the authorization for such services. In the case of an open source license, authorization for the open source shall demonstrate compliance with the open source license.

- 4) A Letter of Authorization shall be on letterhead or through the provider's e-mail. Further, each Letter of Authorization shall be less than twelve (12) months old and must provide the following information:
  - i) Third-party POC name and alternate for verification
  - ii) Third-party POC mailing address
  - iii) Third-party POC telephone number
  - iv) Third-party POC email address
  - v) If available, a Re-Seller Identifier

#### **5.4 Volume II – Financial Proposal**

The Financial Proposal shall contain all price information in the format specified in **Attachment B**. The Offeror shall complete the Financial Proposal Form only as provided in the Financial Proposal Instructions and the Financial Proposal Form itself. Do not amend, alter, or leave blank any items on the Financial Proposal Form or include additional clarifying or contingent language on or attached to the Financial Proposal Form. Failure to adhere to any of these instructions may result in the Proposal being determined to be not reasonably susceptible of being selected for award and rejected by the Department.

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## 6 Evaluation and Selection Process

### 6.1 Evaluation Committee

Evaluation of Proposals will be performed in accordance with COMAR 21.05.03 by a committee established for that purpose and based on the evaluation criteria set forth below. The Evaluation Committee will review Proposals, participate in Offeror oral presentations and discussions, and provide input to the Procurement Officer. The Department reserves the right to utilize the services of individuals outside of the established Evaluation Committee for advice and assistance, as deemed appropriate.

During the evaluation process, the Procurement Officer may determine at any time that a particular Offeror is not susceptible for award.

### 6.2 Technical Proposal Evaluation Criteria

The criteria to be used to evaluate each Technical Proposal are listed below in descending order of importance. Unless stated otherwise, any sub-criteria within each criterion have equal weight.

#### 6.2.1 Offeror's Technical Response to Requirements and Work Plan (See RFP § 5.3.2.F)

The State prefers the Offeror's Technical Proposal to illustrate a comprehensive understanding of work requirements and mastery of the subject matter, including an explanation of how the work will be performed. Proposals which include limited responses to work requirements such as "concur" or "will comply" will receive a lower ranking than those Proposals that demonstrate an understanding of the work requirements and include plans to meet or exceed them.

#### 6.2.2 Experience and Qualifications of Proposed Staff (See RFP § 5.3.2.G)

#### 6.2.3 Offeror Qualifications and Capabilities, including proposed subcontractors (See RFP § 5.3.2.H)

#### 6.2.4 Economic Benefit to State of Maryland (See RFP § 5.3.2.O)

### 6.3 Financial Proposal Evaluation Criteria

6.3.1 All Qualified Offerors (see **Section 6.5.2.D**) will be ranked from the lowest (most advantageous) to the highest (least advantageous) price based on the Total Proposal Price within the stated guidelines set forth in this RFP and as submitted on **Attachment B - Financial Proposal Form**.

### 6.4 Reciprocal Preference

6.4.1 Although Maryland law does not authorize procuring agencies to favor resident Offerors in awarding procurement contracts, many other states do grant their resident businesses preferences over Maryland contractors. COMAR 21.05.01.04 permits procuring agencies to apply a reciprocal preference under the following conditions:

- A. The Maryland resident business is a responsible Offeror;
- B. The most advantageous Proposal is from a responsible Offeror whose principal office, or principal base of operations is in another state;
- C. The other state gives a preference to its resident businesses through law, policy, or practice; and

- D. The preference does not conflict with a federal law or grant affecting the procurement Contract.
- 6.4.2 The preference given shall be identical to the preference that the other state, through law, policy, or practice gives to its resident businesses.

## 6.5 Selection Procedures

### 6.5.1 General

- A. The Contract will be awarded in accordance with the Competitive Sealed Proposals (CSP) method found at COMAR 21.05.03. The CSP method allows for the conducting of discussions and the revision of Proposals during these discussions. Therefore, the State may conduct discussions with all Offerors that have submitted Proposals that are determined to be reasonably susceptible of being selected for contract award or potentially so. However, the State reserves the right to make an award without holding discussions.
- B. With or without discussions, the State may determine the Offeror to be not responsible or the Offeror's Proposal to be not reasonably susceptible of being selected for award at any time after the initial closing date for receipt of Proposals and prior to Contract award.

### 6.5.2 Selection Process Sequence

- A. A determination is made that the MDOT Certified MBE Utilization and Fair Solicitation Affidavit (**Attachment D-1A**) is included and is properly completed, if there is a MBE goal. In addition, a determination is made that the VSBE Utilization Affidavit and subcontractor Participation Schedule (**Attachment E-1**) is included and is properly completed, if there is a VSBE goal.
- B. Technical Proposals are evaluated for technical merit and ranked. During this review, oral presentations and discussions may be held. The purpose of such discussions will be to assure a full understanding of the State's requirements and the Offeror's ability to perform the services, as well as to facilitate arrival at a Contract that is most advantageous to the State. Offerors will be contacted by the State as soon as any discussions are scheduled.
- C. Offerors must confirm in writing any substantive oral clarifications of, or changes in, their Technical Proposals made in the course of discussions. Any such written clarifications or changes then become part of the Offeror's Technical Proposal. Technical Proposals are given a final review and ranked.
- D. The Financial Proposal of each Qualified Offeror (a responsible Offeror determined to have submitted an acceptable Proposal) will be evaluated and ranked separately from the Technical evaluation. After a review of the Financial Proposals of Qualified Offerors, the Evaluation Committee or Procurement Officer may again conduct discussions to further evaluate the Offeror's entire Proposal.
- E. When in the best interest of the State, the Procurement Officer may permit Qualified Offerors to revise their initial Proposals and submit, in writing, Best and Final Offers (BAFOs). The State may make an award without issuing a request for a BAFO. **Offerors may only perform limited substitutions of proposed personnel as allowed in Section 3.11 (Substitution of Personnel).**

**6.5.3 Award Determination**

Upon completion of the Technical Proposal and Financial Proposal evaluations and rankings, each Offeror will receive an overall ranking. The Procurement Officer will recommend award of the Contract to the responsible Offeror that submitted the Proposal determined to be the most advantageous to the State. In making this most advantageous Proposal determination, technical and financial factors will receive equal weight.

**6.6 Documents Required upon Notice of Recommendation for Contract Award**

Upon receipt of a Notification of Recommendation for Contract award, the apparent awardee shall complete and furnish the documents and attestations as directed in Table 1 of **Section 7 – RFP Attachments and Appendices**.

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## 7 RFP ATTACHMENTS AND APPENDICES

### Instructions Page

A Proposal submitted by the Offeror must be accompanied by the completed forms and/or affidavits identified as “with Proposal” in the “When to Submit” column in Table 1 below. All forms and affidavits applicable to this RFP, including any applicable instructions and/or terms, are identified in the “Applies” and “Label” columns in Table 1.

For documents required as part of the Proposal:

1. For e-mail submissions, submit one (1) copy of each with signatures.
2. For paper submissions, submit two (2) copies of each with original signatures. All signatures must be clearly visible.

All Offerors are advised that if a Contract is awarded as a result of this solicitation, the successful Offeror will be required to complete certain forms and affidavits after notification of recommended award. The list of forms and affidavits that must be provided is described in Table 1 below in the “When to Submit” column.

For documents required after award, submit three (3) copies of each document within the appropriate number of days after notification of recommended award, as listed in Table 1 below in the “When to Submit” column.

**Table 1: RFP ATTACHMENTS AND APPENDICES**

Applies?	When to Submit	Label	Attachment Name
Y	Before Proposal	A	Pre-Proposal Conference Response Form
Y	With Proposal	B	Financial Proposal Instructions and Form
Y	With Proposal	C	Bid/Proposal Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf</a> )
Y	With Proposal	D	MBE Forms D-1A (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> )
Y	10 Business Days after recommended award	D	MBE Forms D-1B, D-1C, D-2, D-3A, D-3B (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> ) <b>Important:</b> Attachment D-1C, if a waiver has been requested, is also required within 10 days of recommended award.

<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Attachment Name</b>
<b>Y</b>	As directed in forms	<b>D</b>	MBE Forms D-4A, D-4B, D-5 (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf</a> )
<b>Y</b>	With Proposal	<b>F</b>	Maryland Living Wage Requirements for Service Contracts and Affidavit of Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf</a> )
<b>Y</b>	With Proposal	<b>G</b>	Federal Funds Attachments (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf</a> )
<b>Y</b>	With Proposal	<b>H</b>	Conflict of Interest Affidavit and Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf</a> )
<b>Y</b>	With Proposal	<b>I</b>	Non-Disclosure Agreement (Contractor) (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf</a> )
<b>Y</b>	With Proposal	<b>J</b>	HIPAA Business Associate Agreement (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf</a> )
<b>Y</b>	With Proposal	<b>L</b>	Location of the Performance of Services Disclosure (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf</a> )
<b>Y</b>	5 Business Days after recommended award	<b>M</b>	Sample Contract (included in this RFP)
<b>Y</b>	5 Business Days after recommended award	<b>N</b>	Contract Affidavit (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf</a> )
<b>Y</b>	n/a	<b>P</b>	Behavior Assessment
<b>Y</b>	n/a	<b>Q</b>	Weekly Behavior Respite Report
<b>Y</b>	n/a	<b>R</b>	Behavior Assessment Request Form

<b>Applies?</b>	<b>When to Submit</b>	<b>Label</b>	<b>Attachment Name</b>
<b>Appendices</b>			
<b>Y</b>	n/a	1	Abbreviations and Definitions (included in this RFP)
<b>Y</b>	With Proposal	2	Offeror Information Sheet (see link at <a href="http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf">http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf</a> )
<b>Additional Submissions</b>			
<b>Y</b>	5 Business Days after recommended award		Evidence of meeting insurance requirements (see <b>Section 3.6</b> ); 1 copy
<b>Y</b>	10 Business Days after recommended award		PEP; (See Section 3.8); 1 copy

**Attachment A. Pre-Proposal Conference Response Form**

**Solicitation Number 20-17375**

**BEHAVIOR RESPITE AND MOBILE CRISIS INTERVENTION SERVICES**

A Pre-Proposal conference will be held on July 23, 2019 @ 10:00 AM, at 201 West Preston Street, Room L3, Baltimore, MD.

Please return this form by July 19, 2019 at 4:00 PM, advising whether or not your firm plans to attend. The completed form should be returned via fax to the Procurement Coordinator at the contact information below:

Sherida Studwood  
Developmental Disabilities Administration  
Fax #: 410-767-5850

Please indicate:

\_\_\_\_\_ Yes, the following representatives will be in attendance.  
Attendees (Check the RFP for limits to the number of attendees allowed):  
1.  
2.  
3.  
\_\_\_\_\_ No, we will not be in attendance.

Please specify whether any reasonable accommodations are requested (see RFP § 4.1 "Pre-Proposal conference"):

Offeror:

\_\_\_\_\_  
*Offeror Name (please print or type)*

By:

\_\_\_\_\_  
*Signature/Seal*

Printed Name:

\_\_\_\_\_  
*Printed Name*

Title:

\_\_\_\_\_  
*Title*

Date:

\_\_\_\_\_  
*Date*

**Directions to the Pre-Proposal Conference**

\*Depending upon space availability, the Department reserves the right to limit the number of representatives attending the Conference from the same vendor.



## Attachment B. Financial Proposal Instructions & Form

### B-1 Financial Proposal Instructions

In order to assist Offerors in the preparation of their Financial Proposal and to comply with the requirements of this solicitation, Financial Proposal Instructions and a Financial Proposal Form have been prepared. Offerors shall submit their Financial Proposal on the Financial Proposal Form in accordance with the instructions on the Financial Proposal Form and as specified herein. Do not alter the Financial Proposal Form or the Proposal may be determined to be not reasonably susceptible of being selected for award. The Financial Proposal Form is to be signed and dated, where requested, by an individual who is authorized to bind the Offeror to the prices entered on the Financial Proposal Form.

The Financial Proposal Form is used to calculate the Offeror's TOTAL Proposal PRICE. Follow these instructions carefully when completing your Financial Proposal Form:

- A) All Unit and Extended Prices must be clearly entered in dollars and cents, e.g., \$24.15. Make your decimal points clear and distinct.
- B) All Unit Prices must be the actual price per unit the State will pay for the specific item or service identified in this RFP and may not be contingent on any other factor or condition in any manner.
- C) All calculations shall be rounded to the nearest cent, e.g., .344 shall be .34 and .345 shall be .35.
- D) Any goods or services required through this RFP and proposed by the vendor at **No Cost to the State** must be clearly entered in the Unit Price, if appropriate, and Extended Price with **\$0.00**.
- E) Every blank in every Financial Proposal Form shall be filled in. Any changes or corrections made to the Financial Proposal Form by the Offeror prior to submission shall be initialed and dated.
- F) Except as instructed on the Financial Proposal Form, nothing shall be entered on or attached to the Financial Proposal Form that alters or proposes conditions or contingencies on the prices. Alterations and/or conditions may render the Proposal not reasonably susceptible of being selected for award.
- G) It is imperative that the prices included on the Financial Proposal Form have been entered correctly and calculated accurately by the Offeror and that the respective total prices agree with the entries on the Financial Proposal Form. Any incorrect entries or inaccurate calculations by the Offeror will be treated as provided in COMAR 21.05.03.03.F, and may cause the Proposal to be rejected.
- H) If option years are included, Offerors must submit pricing for each option year. Any option to renew will be exercised at the sole discretion of the State and comply with all terms and conditions in force at the time the option is exercised. If exercised, the option period shall be for a period identified in the RFP at the prices entered in the Financial Proposal Form.
- I) All Financial Proposal prices entered below are to be fully loaded prices that include all costs/expenses associated with the provision of services as required by the RFP. The Financial Proposal price shall include, but is not limited to, all: labor, profit/overhead, general operating, administrative, and all other expenses and costs necessary to perform the work set forth in the solicitation. No other amounts will be paid to the Contractor. If labor rates are requested, those amounts shall be fully-loaded rates; no overtime amounts will be paid.
- J) Unless indicated elsewhere in the RFP, sample amounts used for calculations on the Financial Proposal Form are typically estimates for evaluation purposes only. Unless stated otherwise in the RFP, the Department does not guarantee a minimum or maximum number of units or usage in the performance of the Contract.

K) Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

**B-1 Financial Proposal Form**

The Financial Proposal Form shall contain all price information in the format specified on these pages. Complete the Financial Proposal Form only as provided in the Financial Proposal Instructions. Do not amend, alter or leave blank any items on the Financial Proposal Form. If option years are included, Offerors must submit pricing for each option year. Failure to adhere to any of these instructions may result in the Proposal being determined not reasonably susceptible of being selected for award.

See separate Excel Financial Proposal Form labeled DDA SS BRMC 20-17375 B-2 Financial Form.

<b>Attachment C.      Proposal Affidavit</b>
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See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid\\_Proposal-Affidavit.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf).

<b>Attachment D.      Minority Business Enterprise (MBE) Forms</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentDMBE-Forms-1.pdf>.

This solicitation includes a Minority Business Enterprise (MBE) participation goal of   3   percent and no subgoals.

<b>Attachment E.      Veteran-Owned Small Business Enterprise (VSBE) Forms</b>
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This solicitation does not include a Veteran-Owned Small Business Enterprise goal.

**Attachment F. Maryland Living Wage Affidavit of Agreement for  
Service Contracts**

See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentF-LivingWageAffidavit.pdf>.

- A. This contract is subject to the Living Wage requirements under Md. Code Ann., State Finance and Procurement Article, Title 18, and the regulations proposed by the Commissioner of Labor and Industry (Commissioner). The Living Wage generally applies to a Contractor or subcontractor who performs work on a State contract for services that is valued at \$100,000 or more. An employee is subject to the Living Wage if he/she is at least 18 years old or will turn 18 during the duration of the contract; works at least 13 consecutive weeks on the State Contract and spends at least one-half of the employee's time during any work week on the State Contract.
- B. The Living Wage Law does not apply to:
  - (1) A Contractor who:
    - (a) Has a State contract for services valued at less than \$100,000, or
    - (b) Employs 10 or fewer employees and has a State contract for services valued at less than \$500,000.
  - (2) A subcontractor who:
    - (a) Performs work on a State contract for services valued at less than \$100,000,
    - (b) Employs 10 or fewer employees and performs work on a State contract for services valued at less than \$500,000, or
    - (c) Performs work for a Contractor not covered by the Living Wage Law as defined in B(1)(b) above, or B (3) or C below.
  - (3) Service contracts for the following:
    - (a) Services with a Public Service Company;
    - (b) Services with a nonprofit organization;
    - (c) Services with an officer or other entity that is in the Executive Branch of the State government and is authorized by law to enter into a procurement ("Unit"); or
    - (d) Services between a Unit and a County or Baltimore City.
- C. If the Unit responsible for the State contract for services determines that application of the Living Wage would conflict with any applicable Federal program, the Living Wage does not apply to the contract or program.
- D. A Contractor must not split or subdivide a State contract for services, pay an employee through a third party, or treat an employee as an independent Contractor or assign work to employees to avoid the imposition of any of the requirements of Md. Code Ann., State Finance and Procurement Article, Title 18.
- E. Each Contractor/subcontractor, subject to the Living Wage Law, shall post in a prominent and easily accessible place at the work site(s) of covered employees a notice of the Living Wage Rates, employee rights under the law, and the name, address, and telephone number of the Commissioner.

- F. The Commissioner shall adjust the wage rates by the annual average increase or decrease, if any, in the Consumer Price Index for all urban consumers for the Washington/Baltimore metropolitan area, or any successor index, for the previous calendar year, not later than 90 days after the start of each fiscal year. The Commissioner shall publish any adjustments to the wage rates on the Division of Labor and Industry's website. An employer subject to the Living Wage Law must comply with the rate requirements during the initial term of the contract and all subsequent renewal periods, including any increases in the wage rate, required by the Commissioner, automatically upon the effective date of the revised wage rate.
- G. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of the health insurance premium, as provided in Md. Code Ann., State Finance and Procurement Article, §18-103(c), shall not lower an employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's share of health insurance premium shall comply with any record reporting requirements established by the Commissioner.
- H. A Contractor/subcontractor may reduce the wage rates paid under Md. Code Ann., State Finance and Procurement Article, §18-103(a), by no more than 50 cents of the hourly cost of the employer's contribution to an employee's deferred compensation plan. A Contractor/subcontractor who reduces the wages paid to an employee based on the employer's contribution to an employee's deferred compensation plan shall not lower the employee's wage rate below the minimum wage as set in Md. Code Ann., Labor and Employment Article, §3-413.
- I. Under Md. Code Ann., State Finance and Procurement Article, Title 18, if the Commissioner determines that the Contractor/subcontractor violated a provision of this title or regulations of the Commissioner, the Contractor/subcontractor shall pay restitution to each affected employee, and the State may assess liquidated damages of \$20 per day for each employee paid less than the Living Wage.
- J. Information pertaining to reporting obligations may be found by going to the Division of Labor and Industry website <http://www.dlir.state.md.us/labor/prev/livingwage.shtml> and clicking on Living Wage for State Service Contracts.



<b>Attachment G.      Federal Funds Attachments</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentG-FederalFundsAttachment.pdf>.

<b>Attachment H.      Conflict of Interest Affidavit and Disclosure</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentH-ConflictofInterestAffidavit.pdf>.

<b>Attachment I.      Non-Disclosure Agreement (Contractor)</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-I-Non-DisclosureAgreementContractor.pdf>.

<b>Attachment J.      HIPAA Business Associate Agreement</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-J-HIPAABusinessAssociateAgreement.pdf>.

<b>Attachment K.      Mercury Affidavit</b>
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This solicitation does not include the procurement of products known to likely include mercury as a component.

<b>Attachment L.      Location of the Performance of Services Disclosure</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-L-PerformanceofServicesDisclosure.pdf>.

**Attachment M. Contract**

MARYLAND DEPARTMENT OF HEALTH – DEVELOPMENTAL DISABILITIES  
ADMINISTRATION (DDA)

**BEHAVIORAL RESPITE AND MOBILE CRISIS INTERVENTION SERVICES**

**20-17375**

THIS CONTRACT (the “Contract”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ (the “Contractor”) and the STATE OF MARYLAND, acting through the MARYLAND <<ISSUINGAGENCYNAME>> (“<<ISSUINGAGENCYACRONYM>>” or the “<<typeofAgency>>”).

In consideration of the promises and the covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

**1. Definitions**

In this Contract, the following words have the meanings indicated:

- 1.1 “COMAR” means Code of Maryland Regulations.
- 1.2 “Contractor” means the entity first named above whose principal business address is (Contractor’s primary address) and whose principal office in Maryland is (Contractor’s local address), whose Federal Employer Identification Number or Social Security Number is (Contractor’s FEIN), and whose eMaryland Marketplace vendor ID number is (eMM Number).
- 1.3 “Financial Proposal” means the Contractor’s Financial Proposal dated \_\_\_\_\_ (Financial Proposal date), as modified by any Best and Final Offer thereto.
- 1.4 Minority Business Enterprise (MBE) – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
- 1.5 “RFP” means the Request for Proposals for <<solicitationTitle>>, Solicitation # <<solicitationNumber>>, and any amendments, addenda, and attachments thereto issued in writing by the State.
- 1.6 “State” means the State of Maryland.
- 1.7 “Technical Proposal” means the Contractor’s Technical Proposal dated. \_\_\_\_\_ (Technical Proposal date), as modified and supplemented by the Contractor’s responses to requests clarifications and requests for cure, and by any Best and Final Offer.
- 1.8 “Veteran-owned Small Business Enterprise” (VSBE) means A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.
- 1.9 Capitalized terms not defined herein shall be ascribed the meaning given to them in the RFP.

**2. Scope of Contract**

- 2.1 The Contractor shall perform in accordance with this Contract and Exhibits A-D, which are listed below and incorporated herein by reference. If there is any conflict between this Contract and the Exhibits, the terms of the Contract shall control. If there is any conflict among the Exhibits, the following order of precedence shall determine the prevailing provision:

Exhibit A – The RFP



Exhibit B – The Contract Affidavit, executed by the Contractor and dated (date of Attachment C)

Exhibit C – The Technical Proposal

Exhibit D – The Financial Proposal

- 2.2 The Procurement Officer may, at any time, by written order, make unilateral changes in the work within the general scope of the Contract. No other order, statement, or conduct of the Procurement Officer or any other person shall be treated as a change or entitle the Contractor to an equitable adjustment under this section. Except as otherwise provided in this Contract, if any change under this section causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work, whether or not changed by the order, an equitable adjustment in the Contract price shall be made and the Contract modified in writing accordingly. The Contractor must assert in writing its right to an adjustment under this section within thirty (30) days of receipt of written change order and shall include a written statement setting forth the nature and cost of such claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. Failure to agree to an adjustment under this section shall be a dispute under the Disputes clause. Nothing in this section shall excuse the Contractor from proceeding with the Contract as changed.
- 2.3 Without limiting the rights of the Procurement Officer under Section 2.2 above, the Contract may be modified by mutual agreement of the parties, provided: (a) the modification is made in writing; (b) all parties sign the modification; and (c) all approvals by the required agencies as described in COMAR Title 21, are obtained.

### **3. Period of Performance**

- 3.1 The term of this Contract begins on the date the Contract is signed by the Department following any required prior approvals, including approval by the Board of Public Works, if such approval is required April 1, 2020 and shall continue until March 31, 2023.
- 3.2 In its sole discretion, the Department shall have the unilateral right to extend the Contract for two additional, successive one-year terms - at the prices established in the Contract. "Term" means the Initial Term and any Renewal Term(s).
- 3.3. The Contractor's performance under the Contract shall commence as of the date provided in a written NTP.
- 3.4 The Contractor's obligation to pay invoices to subcontractors providing products/services in connection with this Contract, as well as the audit; confidentiality; document retention; patents, copyrights & intellectual property; warranty; indemnification obligations; and limitations of liability under this Contract; and any other obligations specifically identified, shall survive expiration or termination of the Contract.

### **4. Consideration and Payment**

- 4.1 In consideration of the satisfactory performance of the work set forth in this Contract, the Department shall pay the Contractor in accordance with the terms of this Contract and at the prices quoted in the Financial Proposal. Unless properly modified (see above Section 2), payment to the Contractor pursuant to this Contract, including the Initial Term and any Renewal Term, shall not exceed the Contracted amount.

The total payment under a fixed price Contract or the fixed price element of a combined fixed price – time and materials Contract shall be the firm fixed price submitted by the Contractor in its Financial Proposal.

- 4.2 Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the Department's receipt of a proper invoice from the Contractor as required by RFP section 3.3.

The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

- (1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and
- (2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

- (1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or
- (2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable.

Final payment under this Contract will not be made until after certification is received from the Comptroller of the State that all taxes have been paid.

Electronic funds transfer shall be used by the State to pay Contractor pursuant to this Contract and any other State payments due Contractor unless the State Comptroller's Office grants Contractor an exemption.

- 4.3 In addition to any other available remedies, if, in the opinion of the Procurement Officer, the Contractor fails to perform in a satisfactory and timely manner, the Procurement Officer may refuse or limit approval of any invoice for payment, and may cause payments to the Contractor to be reduced or withheld until such time as the Contractor meets performance standards as established by the Procurement Officer.
- 4.4 Payment of an invoice by the Department is not evidence that services were rendered as required under this Contract.

## **5. Rights to Records**

- 5.1 The Contractor agrees that all documents and materials including, but not limited to, software, reports, drawings, studies, specifications, estimates, tests, maps, photographs, designs, graphics, mechanical, artwork, computations, and data prepared by the Contractor for purposes of this Contract shall be the sole property of the State and shall be available to the State at any time. The State shall have the right to use the same without restriction and without compensation to the Contractor other than that specifically provided by this Contract.
- 5.2 The Contractor agrees that at all times during the term of this Contract and thereafter, works created as a Deliverable under this Contract (as defined in **Section 7.2**), and services performed under this Contract shall be "works made for hire" as that term is interpreted under U.S. copyright law. To the extent that any products created as a Deliverable under this Contract are not works made for hire for the State, the Contractor hereby relinquishes, transfers, and assigns to the State all of its rights, title, and interest (including all intellectual property rights) to all such products created under this

Contract, and will cooperate reasonably with the State in effectuating and registering any necessary assignments.

- 5.3 The Contractor shall report to the Contract Monitor, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all data delivered under this Contract.
- 5.4 The Contractor shall not affix any restrictive markings upon any data, documentation, or other materials provided to the State hereunder and if such markings are affixed, the State shall have the right at any time to modify, remove, obliterate, or ignore such warnings.
- 5.5 Upon termination or expiration of the Contract, the Contractor, at its own expense, shall deliver any equipment, software or other property provided by the State to the place designated by the Procurement Officer.

## **6. Exclusive Use**

- 6.1 The State shall have the exclusive right to use, duplicate, and disclose any data, information, documents, records, or results, in whole or in part, in any manner for any purpose whatsoever, that may be created or generated by the Contractor in connection with this Contract. If any material, including software, is capable of being copyrighted, the State shall be the copyright owner and Contractor may copyright material connected with this project only with the express written approval of the State.
- 6.2 Except as may otherwise be set forth in this Contract, Contractor shall not use, sell, sub-lease, assign, give, or otherwise transfer to any third party any other information or material provided to Contractor by the Department or developed by Contractor relating to the Contract, except as provided for in **Section 8. Confidential or Proprietary Information and Documentation**.

## **7. Patents, Copyrights, and Intellectual Property**

- 7.1. All copyrights, patents, trademarks, trade secrets, and any other intellectual property rights existing prior to the Effective Date of this Contract shall belong to the party that owned such rights immediately prior to the Effective Date ("Pre-Existing Intellectual Property"). If any design, device, material, process, or other item provided by Contractor is covered by a patent or copyright or which is proprietary to or a trade secret of another, the Contractor shall obtain the necessary permission or license to permit the State to use such item or items pursuant to its rights granted under the Contract.
- 7.2 Except for (1) information created or otherwise owned by the Department or licensed by the Department from third parties, including all information provided by the Department to Contractor; (2) materials created by Contractor or its subcontractor(s) specifically for the State under the Contract ("Deliverables"), except for any Contractor Pre-Existing Intellectual Property included therein; and (3) the license rights granted to the State, all right, title, and interest in the intellectual property embodied in the solution, including the know-how and methods by which the solution is provided and the processes that make up the solution, will belong solely and exclusively to Contractor and its licensors, and the Department will have no rights to the same except as expressly granted in this Contract. Any SaaS Software developed by Contractor during the performance of the Contract will belong solely and exclusively to Contractor and its licensors. For all Software provided by the Contractor under the Contract, Contractor hereby grants to the State a nonexclusive, irrevocable, unlimited, perpetual, non-cancelable, and non-terminable right to use and make copies of the Software and any modifications to the Software. For all Contractor Pre-Existing Intellectual Property embedded in any Deliverables, Contractor grants to the State a license to use such Contractor Pre-Existing Intellectual Property in connection with its permitted use of such Deliverable. During the period between delivery of a Deliverable by Contractor and the date of

- payment therefor by the State in accordance with this Contract (including throughout the duration of any payment dispute discussions), subject to the terms and conditions contained herein, Contractor grants the State a royalty-free, non-exclusive, limited license to use such Deliverable and to use any Contractor Materials contained therein in accordance with this Contract.
- 7.3. Subject to the terms of **Section 10**, Contractor shall defend, indemnify and hold harmless the State and its agents and employees, from and against any and all claims, costs, losses, damages, liabilities, judgments and expenses (including without limitation reasonable attorneys' fees) arising out of or in connection with any third party claim that the Contractor-provided products/services infringe, misappropriate or otherwise violate any third party intellectual property rights. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 7.4. Without limiting Contractor's obligations under Section 5.3, if an infringement claim occurs, or if the State or the Contractor believes such a claim is likely to occur, Contractor (after consultation with the State and at no cost to the State): (a) shall procure for the State the right to continue using the allegedly infringing component or service in accordance with its rights under this Contract; or (b) replace or modify the allegedly infringing component or service so that it becomes non-infringing and remains compliant with all applicable specifications.
- 7.5. Except as otherwise provided herein, Contractor shall not acquire any right, title or interest (including any intellectual property rights subsisting therein) in or to any goods, Software, technical information, specifications, drawings, records, documentation, data or any other materials (including any derivative works thereof) provided by the State to the Contractor. Notwithstanding anything to the contrary herein, the State may, in its sole and absolute discretion, grant the Contractor a license to such materials, subject to the terms of a separate writing executed by the Contractor and an authorized representative of the State as well as all required State approvals.
- 7.6. Without limiting the generality of the foregoing, neither Contractor nor any of its subcontractors shall use any Software or technology in a manner that will cause any patents, copyrights or other intellectual property which are owned or controlled by the State or any of its affiliates (or for which the State or any of its subcontractors has received license rights) to become subject to any encumbrance or terms and conditions of any third party or open source license (including, without limitation, any open source license listed on <http://www.opensource.org/licenses/alphabetical>) (each an "Open Source License"). These restrictions, limitations, exclusions and conditions shall apply even if the State or any of its subcontractors becomes aware of or fails to act in a manner to address any violation or failure to comply therewith. No act by the State or any of its subcontractors that is undertaken under this Contract as to any Software or technology shall be construed as intending to cause any patents, copyrights or other intellectual property that are owned or controlled by the State (or for which the State has received license rights) to become subject to any encumbrance or terms and conditions of any open source license.
- 7.7. The Contractor shall report to the Department, promptly and in written detail, each notice or claim of copyright infringement received by the Contractor with respect to all Deliverables delivered under this Contract.
- 7.8. The Contractor shall not affix (or permit any third party to affix), without the Department's consent, any restrictive markings upon any Deliverables that are owned by the State, and if such markings are affixed, the Department shall have the right at any time to modify, remove, obliterate, or ignore such warnings.

**8. Confidential or Proprietary Information and Documentation**

- 8.1 Subject to the Maryland Public Information Act and any other applicable laws including, without limitation, HIPAA, the HI-TECH Act, and the Maryland Medical Records Act and regulations promulgated pursuant thereto, all confidential or proprietary information and documentation relating to either party (including without limitation, any information or data stored within the Contractor's computer systems or cloud infrastructure, if applicable) shall be held in confidence by the other party. Each party shall, however, be permitted to disclose, as provided by and consistent with applicable law, relevant confidential information to its officers, agents, and Contractor Personnel to the extent that such disclosure is necessary for the performance of their duties under this Contract. Each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor provided that each officer, agent, and Contractor Personnel to whom any of the State's confidential information is to be disclosed shall be advised by Contractor of the obligations hereunder, and bound by, confidentiality at least as restrictive as those of set forth in this Contract.
- 8.2 The provisions of this section shall not apply to information that: (a) is lawfully in the public domain; (b) has been independently developed by the other party without violation of this Contract; (c) was already rightfully in the possession of such party; (d) was supplied to such party by a third party lawfully in possession thereof and legally permitted to further disclose the information; or (e) which such party is required to disclose by law.

**9. Loss of Data**

- 9.1 In the event of loss of any State data or records where such loss is due to the act or omission of the Contractor or any of its subcontractors or agents, the Contractor shall be responsible for restoring or recreating, as applicable, such lost data in the manner and on the schedule set by the Contract Monitor. The Contractor shall ensure that all data is backed up and recoverable by the Contractor. At no time shall any Contractor actions (or any failures to act when Contractor has a duty to act) damage or create any vulnerabilities in data bases, systems, platforms, and applications with which the Contractor is working hereunder.
- 9.2 In accordance with prevailing federal or state law or regulations, the Contractor shall report the loss of non-public data as directed in **RFP Section 3.7**.
- 9.3 Protection of data and personal privacy (as further described and defined in RFP Section 3.8) shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the conditions identified in **RFP Section 3.7**.

**10. Indemnification and Notification of Legal Requests**

- 10.1. At its sole cost and expense, Contractor shall (i) indemnify and hold the State, its employees and agents harmless from and against any and all claims, demands, actions, suits, damages, liabilities, losses, settlements, judgments, costs and expenses (including but not limited to attorneys' fees and costs), whether or not involving a third party claim, which arise out of or relate to the Contractor's, or any of its subcontractors', performance of this Contract and (ii) cooperate, assist, and consult with the State in the defense or investigation of any such claim, demand, action or suit. Contractor shall not enter into any settlement involving third party claims that contains any admission of or stipulation to any guilt, fault, liability or wrongdoing by the State or that adversely affects the State's rights or interests, without the State's prior written consent.
- 10.2. The State has no obligation: (i) to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim or action of any character is brought against the



Contractor or its subcontractors as a result of or relating to the Contractor's obligations or performance under this Contract, or (ii) to pay any judgment or settlement of any such suit, claim or action. Notwithstanding the foregoing, the Contractor shall promptly notify the Procurement Officer of any such claims, demands, actions, or suits.

- 10.3. Notification of Legal Requests. In the event the Contractor receives a subpoena or other validly issued administrative or judicial process, or any discovery request in connection with any litigation, requesting State Pre-Existing Intellectual Property, of other information considered to be the property of the State, including but not limited to State data stored with or otherwise accessible by the Contractor, the Contractor shall not respond to such subpoena, process or other legal request without first notifying the State, unless prohibited by law from providing such notice. The Contractor shall promptly notify the State of such receipt providing the State with a reasonable opportunity to intervene in the proceeding before the time that Contractor is required to comply with such subpoena, other process or discovery request. .

#### **11. Non-Hiring of Employees**

No official or employee of the State, as defined under Md. Code Ann., General Provisions Article, § 5-101, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the Contractor or any entity that is a subcontractor on this Contract.

#### **12. Disputes**

This Contract shall be subject to the provisions of Md. Code Ann., State Finance and Procurement Article, Title 15, Subtitle 2, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Procurement Officer's decision. Unless a lesser period is provided by applicable statute, regulation, or the Contract, the Contractor must file a written notice of claim with the Procurement Officer within thirty (30) days after the basis for the claim is known or should have been known, whichever is earlier. Contemporaneously with or within thirty (30) days of the filing of a notice of claim, but no later than the date of final payment under the Contract, the Contractor must submit to the Procurement Officer its written claim containing the information specified in COMAR 21.10.04.02.

#### **13. Maryland Law Prevails**

- 13.1 This Contract shall be construed, interpreted, and enforced according to the laws of the State of Maryland.
- 13.2 The Maryland Uniform Computer Information Transactions Act (Commercial Law Article, Title 22 of the Annotated Code of Maryland) does not apply to this Contract or any purchase order, task order, or Notice to Proceed issued thereunder, or any software, or any software license acquired hereunder.
- 13.3 Any and all references to the Maryland Code, annotated and contained in this Contract shall be construed to refer to such Code sections as are from time to time amended.

#### **14. Nondiscrimination in Employment**

The Contractor agrees: (a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry, genetic information, or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit

to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection (a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

**15. Contingent Fee Prohibition**

The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the Contractor to solicit or secure the Contract, and that the Contractor has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of this Contract.

**16. Non-Availability of Funding**

If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be canceled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first.

**17. Termination for Default**

If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provision of the Contract, the State may terminate the Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the termination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

**18. Termination for Convenience**

The performance of work under this Contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination, and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A (2).



**19. Delays and Extensions of Time**

- 19.1 The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.
- 19.2 Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

**20. Suspension of Work**

The State unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of its performance for such period of time as the Procurement Officer may determine to be appropriate for the convenience of the State.

**21. Pre-Existing Regulations**

In accordance with the provisions of Section 11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR 21) in effect on the date of execution of this Contract are applicable to this Contract.

**22. Financial Disclosure**

The Contractor shall comply with the provisions of Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State or its agencies during a calendar year under which the business is to receive in the aggregate, \$100,000 or more, shall within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

**23. Political Contribution Disclosure**

The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Elections website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html).

## **24. Retention of Records**

The Contractor and subcontractors shall retain and maintain all records and documents in any way relating to this Contract for (i) three (3) years after final payment by the State hereunder, or (ii) any applicable federal or State retention requirements (such as HIPAA) or condition of award, , whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, as designated by the Procurement Officer, at all reasonable times. The Contractor shall provide copies of all documents requested by the State, including, but not limited to itemized billing documentation containing the dates, hours spent and work performed by the Contractor and its subcontractors under the Contract. All records related in any way to the Contract are to be retained for the entire time provided under this section.

## **25. Right to Audit**

- 25.1 The State reserves the right, at its sole discretion and at any time, to perform an audit of the Contractor's performance under this Contract. An audit is defined as a planned and documented independent activity performed by qualified personnel, including but not limited to State and federal auditors, to determine by investigation, examination, or evaluation of objective evidence from data, statements, records, operations and performance practices (financial or otherwise) the Contractor's compliance with the Contract, including but not limited to adequacy and compliance with established procedures and internal controls over the services performed pursuant to the Contract.
- 25.2 Upon three (3) Business Days' notice, the State shall be provided reasonable access to Contractor's records to perform any such audits. The Department may conduct these audits with any or all of its own internal resources or by securing the services of a third party accounting or audit firm, solely at the Department's election. The Department may copy any record related to the services performed pursuant to the Contract. The Contractor agrees to fully cooperate and assist in any audit conducted by or on behalf of the State, including, by way of example only, making records and employees available as, where, and to the extent requested by the State and by assisting the auditors in reconciling any audit variances. Contractor shall not be compensated for providing any such cooperation and assistance.
- 25.3 The right to audit shall include any of the Contractor's subcontractors including but not limited to any lower tier subcontractor(s). The Contractor shall ensure the Department has the right to audit such subcontractor(s).

## **26. Compliance with Laws**

The Contractor hereby represents and warrants that:

- a. It is qualified to do business in the State and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;
- b. It is not in arrears with respect to the payment of any monies due and owing the State, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the Term;
- c. It shall comply with all federal, State and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and
- d. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

## **27. Cost and Price Certification**

- 27.1 The Contractor, by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of the date of its Proposal.
- 27.2 The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date of its Proposal, was inaccurate, incomplete, or not current.

## **28. Subcontracting; Assignment**

The Contractor may not subcontract any of its obligations under this Contract without obtaining the prior written approval of the Procurement Officer, nor may the Contractor assign this Contract or any of its rights or obligations hereunder, without the prior written approval of the Procurement Officer, each at the State's sole and absolute discretion; provided, however, that a Contractor may assign monies receivable under a contract after written notice to the State. Any subcontracts shall include such language as may be required in various clauses contained within this Contract, exhibits, and attachments. The Contract shall not be assigned until all approvals, documents, and affidavits are completed and properly registered. The State shall not be responsible for fulfillment of the Contractor's obligations to its subcontractors.

## **29. Limitations of Liability**

- 29.1 Contractor shall be liable for any loss or damage to the State occasioned by the acts or omissions of Contractor, its subcontractors, agents or employees as follows:
- (a) For infringement of patents, trademarks, trade secrets and copyrights as provided in **Section 5 "Patents, Copyrights, Intellectual Property"** of this Contract;
  - (b) Without limitation for damages for bodily injury (including death) and damage to real property and tangible personal property; and
  - (c) For all other claims, damages, loss, costs, expenses, suits or actions in any way related to this Contract and regardless of the basis on which the claim is made, Contractor's liability shall be unlimited.
  - (d) In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that all subcontractors shall be held to be agents of Contractor.
- 29.2 Contractor's indemnification obligations for Third party claims arising under Section 6 ("Indemnification") of this Contract are included in this limitation of liability only if the State is immune from liability. Contractor's indemnification liability for third party claims arising under Section 6 of this Contract shall be unlimited if the State is not immune from liability for claims arising under Section 6.
- 29.3. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor hereunder. For purposes of this Contract, Contractor agrees that it is responsible for performance of the services and compliance with the relevant obligations hereunder by its subcontractors.

## **30. Commercial Nondiscrimination**

- 30.1 As a condition of entering into this Contract, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex,

age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or otherwise unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Contract and may result in termination of this Contract, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

- 30.2 The Contractor shall include the above Commercial Nondiscrimination clause, or similar clause approved by the Department, in all subcontracts.
- 30.3 As a condition of entering into this Contract, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past four (4) years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Contract and may result in Contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- 30.4 The Contractor shall include the language from 30.1, or similar clause approved in writing by the Department, in all subcontracts.

### **31. Prompt Pay Requirements**

- 31.1 If the Contractor withholds payment of an undisputed amount to its subcontractor, the Department, at its option and in its sole discretion, may take one or more of the following actions:
- (a) Not process further payments to the Contractor until payment to the subcontractor is verified;
  - (b) Suspend all or some of the Contract work without affecting the completion date(s) for the Contract work;
  - (c) Pay or cause payment of the undisputed amount to the subcontractor from monies otherwise due or that may become due to the Contractor;
  - (d) Place a payment for an undisputed amount in an interest-bearing escrow account; or
  - (e) Take other or further actions as appropriate to resolve the withheld payment.
- 31.2 An "undisputed amount" means an amount owed by the Contractor to a subcontractor for which there is no good faith dispute. Such "undisputed amounts" include, without limitation: (a) retainage which had been withheld and is, by the terms of the agreement between the Contractor and subcontractor, due to be distributed to the subcontractor; and (b) an amount withheld because of

- issues arising out of an agreement or occurrence unrelated to the agreement under which the amount is withheld.
- 31.3 An act, failure to act, or decision of a Procurement Officer or a representative of the Department concerning a withheld payment between the Contractor and a subcontractor under this **section 31**, may not:
- (a) Affect the rights of the contracting parties under any other provision of law;
  - (b) Be used as evidence on the merits of a dispute between the Department and the Contractor in any other proceeding; or
  - (c) Result in liability against or prejudice the rights of the Department.
- 31.4 The remedies enumerated above are in addition to those provided under COMAR 21.11.03.13 with respect to subcontractors that have contracted pursuant to the MBE program.
- 31.5 To ensure compliance with certified MBE subcontract participation goals, the Department may, consistent with COMAR 21.11.03.13, take the following measures:
- (a) Verify that the certified MBEs listed in the MBE participation schedule actually are performing work and receiving compensation as set forth in the MBE participation schedule. This verification may include, as appropriate:
    - i. Inspecting any relevant records of the Contractor;
    - ii. Inspecting the jobsite; and
    - iii. Interviewing subcontractors and workers.Verification shall include a review of:
    - i. The Contractor's monthly report listing unpaid invoices over thirty (30) days old from certified MBE subcontractors and the reason for nonpayment; and
    - ii. The monthly report of each certified MBE subcontractor, which lists payments received from the Contractor in the preceding thirty (30) days and invoices for which the subcontractor has not been paid.
  - (b) If the Department determines that the Contractor is not in compliance with certified MBE participation goals, then the Department will notify the Contractor in writing of its findings, and will require the Contractor to take appropriate corrective action. Corrective action may include, but is not limited to, requiring the Contractor to compensate the MBE for work performed as set forth in the MBE participation schedule.
  - (c) If the Department determines that the Contractor is in material noncompliance with MBE Contract provisions and refuses or fails to take the corrective action that the Department requires, then the Department may:
    - i. Terminate the Contract;
    - ii. Refer the matter to the Office of the Attorney General for appropriate action; or
    - iii. Initiate any other specific remedy identified by the Contract, including the contractual remedies required by any applicable laws, regulations, and directives regarding the payment of undisputed amounts.

- (d) Upon completion of the Contract, but before final payment or release of retainage or both, the Contractor shall submit a final report, in affidavit form under the penalty of perjury, of all payments made to, or withheld from, MBE subcontractors.

**32. Living Wage**

If a Contractor subject to the Living Wage law fails to submit all records required under COMAR 21.11.10.05 to the Commissioner of Labor and Industry at the Department of Labor, Licensing and Regulation, the Department may withhold payment of any invoice or retainage. The Department may require certification from the Commissioner on a quarterly basis that such records were properly submitted.

**33. Use of Estimated Quantities**

Unless specifically indicated otherwise in the State's solicitation or other controlling documents related to the Scope of Work, any sample amounts provided are estimates only and the Department does not guarantee a minimum or maximum number of units or usage in the performance of this Contract.

**34. Risk of Loss; Transfer of Title**

Risk of loss for conforming supplies, equipment, materials and Deliverables furnished to the State hereunder shall remain with the Contractor until such supplies, equipment, materials and Deliverables are received and accepted by the State, following which, title shall pass to the State.

**35. Effect of Contractor Bankruptcy**

All rights and licenses granted by the Contractor under this Contract are and shall be deemed to be rights and licenses to "intellectual property," and the subject matter of this Contract, including services, is and shall be deemed to be "embodiments of intellectual property" for purposes of and as such terms are used and interpreted under § 365(n) of the United States Bankruptcy Code ("Code") (11 U.S.C. § 365(n) (2010)). The State has the right to exercise all rights and elections under the Code and all other applicable bankruptcy, insolvency and similar laws with respect to this Contract (including all executory statement of works). Without limiting the generality of the foregoing, if the Contractor or its estate becomes subject to any bankruptcy or similar proceeding: (a) subject to the State's rights of election, all rights and licenses granted to the State under this Contract shall continue subject to the respective terms and conditions of this Contract; and (b) the State shall be entitled to a complete duplicate of (or complete access to, as appropriate) all such intellectual property and embodiments of intellectual property, and the same, if not already in the State's possession, shall be promptly delivered to the State, unless the Contractor elects to and does in fact continue to perform all of its obligations under this Contract.

**36. Miscellaneous**

- 36.1 Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive termination or expiration of this Contract and continue in full force and effect.
- 36.2 If any term contained in this Contract is held or finally determined to be invalid, illegal, or unenforceable in any respect, in whole or in part, such term shall be severed from this Contract, and the remaining terms contained herein shall continue in full force and effect, and shall in no way be affected, prejudiced, or disturbed thereby.
- 36.3 The headings of the sections contained in this Contract are for convenience only and shall not be deemed to control or affect the meaning or construction of any provision of this Contract.



- 36.4 This Contract may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile or other electronic means, e.g., and not by way of limitation, in Adobe .PDF sent by electronic mail, shall be deemed to be original signatures.

**37. Contract Monitor and Procurement Officer**

- 37.1 The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. The Department may change the Contract Monitor at any time by written notice to the Contractor.
- 37.2 The Procurement Officer has responsibilities as detailed in the Contract, and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

**38. Notices**

All notices hereunder shall be in writing and either delivered personally or sent by certified or registered mail, postage prepaid, as follows:

If to the State:

Meg DePasquale  
Director of Clinical Services  
Maryland Department of Health  
Developmental Disabilities Administration  
201 W Preston Street, 4<sup>th</sup> Floor  
Baltimore, Maryland 21201

With a copy to:

Dana Dembrow  
Maryland Department of Health  
201 W Preston Street, Room 416A  
Baltimore, Maryland 21201

If to the Contractor:

(Contractor's Name)  
(Contractor's primary address)  
Attn: \_\_\_\_\_

**39. Liquidated Damages for MBE**

- 39.1 The Contract requires the Contractor to comply in good faith with the MBE Program and Contract provisions. The State and the Contractor acknowledge and agree that the State will incur damages,



including but not limited to loss of goodwill, detrimental impact on economic development, and diversion of internal staff resources, if the Contractor does not comply in good faith with the requirements of the MBE Program and MBE Contract provisions. The parties further acknowledge and agree that the damages the State might reasonably be anticipated to accrue as a result of such lack of compliance are difficult to ascertain with precision.

- 39.2 Therefore, upon issuance of a written determination by the State that the Contractor failed to comply in good faith with one or more of the specified MBE Program requirements or MBE Contract provisions, the Contractor shall pay liquidated damages to the State at the rates set forth below. The Contractor expressly agrees that the State may withhold payment on any invoices as a set-off against liquidated damages owed. The Contractor further agrees that for each specified violation, the agreed upon liquidated damages are reasonably proximate to the loss the State is anticipated to incur as a result of such violation.
- (a) Failure to submit each monthly payment report in full compliance with COMAR 21.11.03.13B (3): 35.00 per day until the monthly report is submitted as required.
  - (b) Failure to include in its agreements with MBE subcontractors a provision requiring submission of payment reports in full compliance with COMAR 21.11.03.13B (4): \$85.00 per MBE subcontractor.
  - (c) Failure to comply with COMAR 21.11.03.12 in terminating, canceling, or changing the scope of work/value of a contract with an MBE subcontractor and amendment of the MBE participation schedule: the difference between the dollar value of the MBE participation commitment on the MBE participation schedule for that specific MBE firm and the dollar value of the work performed by that MBE firm for the Contract.
  - (d) Failure to meet the Contractor's total MBE participation goal and sub goal commitments: the difference between the dollar value of the total MBE participation commitment on the MBE participation schedule and the MBE participation actually achieved.
  - (e) Failure to promptly pay all undisputed amounts to an MBE subcontractor in full compliance with the prompt payment provisions of the Contract: \$100.00 per day until the undisputed amount due to the MBE subcontractor is paid.
- 39.3 Notwithstanding the assessment or availability of liquidated damages, the State reserves the right to terminate the Contract and exercise any and all other rights or remedies which may be available under the Contract or Law.

#### **40. Parent Company Guarantee**

(Corporate name of Contractor's Parent Company) hereby guarantees absolutely the full, prompt, and complete performance by (Contractor) of all the terms, conditions and obligations contained in this Contract, as it may be amended from time to time, including any and all exhibits that are now or may become incorporated hereunto, and other obligations of every nature and kind that now or may in the future arise out of or in connection with this Contract, including any and all financial commitments, obligations, and liabilities. (Corporate name of Contractor's Parent Company) may not transfer this absolute guaranty to any other person or entity without the prior express written approval of the State, which approval the State may grant, withhold, or qualify in its sole and absolute subjective discretion. (Corporate name of Contractor's Parent Company) further agrees that if the State brings any claim, action, lawsuit or proceeding against (Contractor), (Corporate name of Contractor's Parent Company) may be named as a party, in its capacity as Absolute Guarantor.

**41. Federal Department of Health and Human Services (DHHS) Exclusion Requirements**

The Contractor agrees that it will comply with federal provisions (pursuant to §§ 1128 and 1156 of the Social Security Act and 42 C.F.R. 1001) that prohibit payments under certain federal health care programs to any individual or entity that is on the List of Excluded Individuals/Entities maintained by DHHS. By executing this Contract, the Contractor affirmatively declares that neither it nor any employee is, to the best of its knowledge, subject to exclusion. The Contractor agrees, further, during the term of this Contract, to check the List of Excluded Individuals/Entities prior to hiring or assigning individuals to work on this Contract, and to notify the Department immediately of any identification of the Contractor or an individual employee as excluded, and of any DHHS action or proposed action to exclude the Contractor or any Contractor employee.

**42. Compliance with Federal Health Insurance Portability and Accountability Act (HIPAA) and State Confidentiality Law**

The Contractor agrees to keep information obtained in the course of this Contract confidential in compliance with \_\_\_\_\_. The Contractor agrees further to comply with any applicable State and federal confidentiality requirements regarding collection, maintenance, and use of health, personally identifiable, and financial information. This includes, where appropriate, the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. §§ 1320d et seq., and implementing regulations at 45 C.F.R. Parts 160 and 164, and the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes providing training and information to employees regarding confidentiality obligations as to health, personally identifiable, and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract. This obligation further includes restricting use and disclosure of the records, generally providing safeguards against misuse of information, keeping a record of any disclosures of information, providing all necessary procedural and legal protection for any disclosures of information, promptly responding to any requests by the Department for information about its privacy practices in general or with respect to a particular individual, modifying information as may be required by good professional practice as authorized by law, and otherwise providing good information management practices regarding all health, personally identifiable, and financial information.

42.1 The Contractor acknowledges its duty to become familiar with and comply, to the extent applicable, with all requirements of the federal Health Insurance Portability and Accountability Act (HIPAA), 42 U.S.C. § 1320d et seq., and implementing regulations including 45 C.F.R. Parts 160 and 164. The Contractor also agrees to comply with the Maryland Confidentiality of Medical Records Act (MCMRA), Md. Code Ann. Health-General §§ 4-301 et seq. This obligation includes:

- (a) As necessary, adhering to the privacy and security requirements for protected health information and medical records under HIPAA and MCMRA and making the transmission of all electronic information compatible with the HIPAA requirements;
- (b) Providing training and information to employees regarding confidentiality obligations as to health and financial information and securing acknowledgement of these obligations from employees to be involved in the Contract; and
- (c) Otherwise providing good information management practices regarding all health information and medical records.

42.2 Based on the determination by the Department that the functions to be performed in accordance with the scope of work set forth in the solicitation constitute business associate functions as defined

in HIPAA, the selected Offeror shall execute a business associate agreement as required by HIPAA regulations at 45 C.F.R. 164.504 and in the form as required by the Department

- 42.3 “Protected Health Information” as defined in the HIPAA regulations at 45 C.F.R. 160.103 and 164.501, means information transmitted as defined in the regulations, that is individually identifiable; that is created or received by a healthcare provider, health plan, public health authority, employer, life insurer, school or university, or healthcare clearinghouse; and that is related to the past, present, or future physical or mental health or condition of an individual, to the provision of healthcare to an individual, or to the past, present, or future payment for the provision of healthcare to an individual. The definition excludes certain education records as well as employment records held by a covered entity in its role as employer.

SIGNATURES ON NEXT PAGE

IN WITNESS THEREOF, the parties have executed this Contract as of the date hereinabove set forth.

Contractor

State of Maryland

Department

By:

By: <<agencyContractSigner>>,  
<<agencyContractSignerTitle>>

Date

PARENT COMPANY (GUARANTOR) (if  
applicable)

By:

\_\_\_\_\_

\_\_\_\_\_

By:

Date

\_\_\_\_\_

Date

Approved for form and legal sufficiency  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

Assistant Attorney General

APPROVED BY BPW: \_\_\_\_\_

(Date)

(BPW Item #)

<b>Attachment N.</b>	<b>Contract Affidavit</b>
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See link at <http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>.

<b>Attachment O.      DHS Hiring Agreement</b>
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This solicitation does not require a DHS Hiring Agreement.

**Attachment P. Behavior Assessment**

**I. DEMOGRAPHIC INFORMATION**

**Name:**

**Date of Birth:**

**Residential Provider/Family Home:**

**Vocational Provider:**

**Target Environment:**

**Current Level of Supervision (As Reflected by PCP):**

**Referral Source:**

**Date of Annual PCP Meeting:**

**Date of Assessment- Final:**

**II. REASON FOR REFERRAL**

Identify the individual, the agency, and the person making the referral. Describe what the referral is for (behavioral assessment and/or consultation), the behavior to be addressed, and the impact that the behavior has on the individual's quality of life.

**III. ASSESSMENT PROCEDURES**

- **Obtain Pre-existing Data from Agency (Data sheets, Incident reports, etc.).**
- Record Review (list the records e.g. psychological, medical, educational assessment, incident reports, anecdotal reports, the PCP, previous behavior plans, therapeutic treatments, the individual's present functional and adaptive behavior.)
- Functional Assessment: (Identify behavior assessment tools (e.g. Humanim FBI-2006, Functional Assessment Interview Form (O'Neill, et. al. – 1997)
- Environmental Assessment (e.g. Contextual Assessment Inventory Carr, E.G., McAtee, M., and Schultz, C.)
- FAST, QABF, MAS (Choose appropriate tool/s)
- Trial-based Functional Analysis
- Informal Interviews
- Verbal Behavior Assessment
- Preference Assessment
- Skill Assessment
- Observation of the Individual (Complete ABC Analysis) in all primary settings
- BSS COMAR Agency Compliance Questionnaire

**IV. BACKGROUND INFORMATION**

**Description of the Individual**

- Age, Gender, Ethnicity
- Height/Weight

**Review of the individual's PCP (strengths, needs assessment, and results of Person Centered Planning)**

- Skill Assessment

**Description of the Individual's History**

- Developmental History
- Psychological History
  - DSM-V Diagnosis (dates)
  - Results of Psychological Test (dates)
- Medical History
  - Medical challenges and how they are being addressed
- Medical and physical variables that might affect behavior (e.g. sleep cycle, eating routine, diets, visual impairments, hearing loss, etc.)
- Educational/Employment/Family History
- Current living conditions/cohabitants
- Regular activities/what the individual does well
- History of the behaviors of concern, previous programs designed to address behaviors and the results
- Current psychotropic medications include the following:

Medication: Name, dosage, level etc.

Prescribed by:

Prescribed for:

Side Effects:

**Reduction Plan:** For example: The prescribing physician will review behavior data and relevant clinical information every 90 days. At that time, the physician will make a determination regarding the lowest effective dosage that can be prescribed. Potential side effects as reported by the physician will be monitored by the staff and reported to the physician to ensure that the potential side effects do not outweigh the consequences of the behavior that will occur without the use of the medication.

**V. ULTIMATE OBJECTIVE**

Based on a review of Individual's PCP goals and communication with the individual's team, the following lifestyle improvements will be the focus of a treatment plan and/or service strategies:

1. [(Individual and/or stakeholders) will, to the best of their ability, describe changes relevant to any or all of the following life goals: (i.e. acquisition of skills which allow the individual to improve their repertoires of socially significant behaviors which would result in an appropriate habilitation ratio). For example:
  - Physical well-being, e.g., safety, privacy, health changes (e.g. learning to engage in safe behaviors, asking for privacy, make healthy choices
  - Increased choice, control, and/or personal freedom, e.g., planning schedule and complete verbal behavior repertoire
  - Participation in social/community leisure activities, e.g., attending church, being able to make change, order food, take public transportation, etc.



- Development of skills that promote independence, e.g., self-care, work enhanced relationships and ability to interact)]

## **VI. ASSESSMENT RESULTS**

- Observations of the individual in primary environments;
  - Describe type & quality of interactions with staff and other individuals.
  - Results of ABC Analysis.
- Environment Assessment
  - Identify the assessment and describe setting stimuli, controlling stimuli, and ecological events
- Preference Assessment
  - Describe things and activities that might serve as reinforcers.
- The Individual Plan
  - Summarize the results of the Person Centered Plan (PCP) and review the strengths and needs identified in the IP.
- Skill Assessment
  - Describe adaptive skills/functional skills in the individual's repertoire
- Verbal Behavior Assessment – Use Verbal Behavior Interview Form (e.g. Sundberg M.L., **Verbal Behavior Workshop** (p.36-38) ABAI Convention, Atlanta 2006)
  - Describe verbal behavior repertoire and/or the primary means of communication that the individual utilizes (e.g. tugging, pulling, pointing, PECS, gestures, verbalizations etc.)
- Results of the Functional Assessment
  - Describe or identify procedures that the assessment is based on.
  - Summarize the results of the assessment.
    - Rational: Indicate why the behavior is challenging and problematic
    - If the behavior is part of a functional response class operationally define (i.e. describe the topography) the response class and provide examples of the behavior
    - Operationally define of each of the behaviors that compose the functional response class
    - If the behavior is not a functional response class, operationally define the behavior and provide examples of the behavior
    - Report the current frequency and duration of the behaviors

- Report the severity of the behavior and the rating scale for severity
  - Report on the variability of the behavior and cyclicity
  - Describe the antecedents for the behavior (i.e., describe the controlling stimuli both contextual and discriminative and the motivating operations) Identify possible setting stimuli.
  - Describe the consequence that maintains the target behavior
  - Describe the hypothesized function of the behavior and identify the type of reinforcer maintaining the behavior with examples from the assessment.
  - ABC Analysis (Direct Observation and results of FBI)
  - Specify and describe functional alternative for each target behavior
- Baseline
    - Report the current baseline data provided by the agency and provide results of direct observation (e.g. an updated ABC Data sheet with the antecedents and consequences identified by the Functional Assessment identified on the data sheet).

#### Tier One – Universal Strategies

- Tier One Strategies: (Universal strategies, focused on enhancing quality of life, supporting staff, training, environmental manipulation, positive reinforcement. Teaching strategies. Asset.

What to focus on - Proactive, preventive, positive, teaching-based strategies to use consistently and continuously

When should these strategies be used - ALL THE TIME (e.g., offering choice, consistently ensuring positive interactions occur on a regular basis, setting expectations, using schedules, reinforcing positive behavior, etc.)?

#### Tier Two Strategies

- Tier Two Strategies: Targeted Supports are intended to support an individual(s) who is at risk of a reduced quality of life due to actions or the actions of another person. The reasons for initiating Targeted Supports may include life events (e.g. death in family, romantic breakup, job loss, chronic work avoidance, etc.) and/or behaviors that are not immediately high risk such as: an increase in teasing, or the disruption of others.
- A change in social responsiveness such as chronically avoiding work or social events; increase in teasing or disruption of others; clinically known risk factors for the individual such as a change in baseline habits (e.g. sleep, eating, toileting, etc. or; individuals requests for additional support; in stressful life events combined with the individuals prior history of serious challenging behavior.
- (Increased targeted instruction/intervention for those individuals currently “At-Risk”) Targeted - at risk individuals, where universal prevention alone does not work, to prevent a problem from becoming a big problem.

What to focus on - Focused teaching strategies (Positive Behavior Support services – social skills training, utilization of self-regulatory techniques like anger management relaxation training -teaching to request a break, group based intervention - example a day program work team with interpersonal conflicts / group problem solving or conflict management, changing a class schedule, adding more breaks, all developed and implemented by stake holders in the community. Teaching replacement behaviors strategies

When should these strategies be used - When specific skill deficits are resulting in problem behavior at specific times or during specific activities e.g., social skill training to improve interactions with opposite sex in the community e.g., coping skills to improve interactions with roommates when disagreements arise

- Outcomes that are to be assessed – Incident reports / Request for Service Change / ABC analysis – direct observation / daily-weekly data collection (progress notes) / other screening tools.

#### Tier Three Strategies

- Tier Three Strategies - Intensive (Increase in duration of interventions to focus on the “High-Risk” individual, reduced group size, instruction and intervention based upon the individual need. Intensive and individualized interventions – Assessment/evaluation based.

What to focus on - Applied Behavior Analysis services – Functional assessment, intensive behavioral supports developed in collaboration with the individual’s team

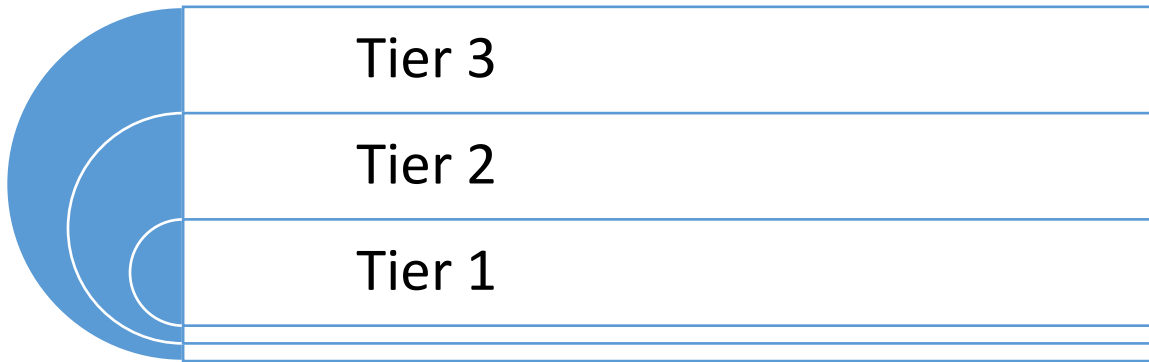
When should these strategies be used - When behavior is causing risk for significant harm, behaviors cause limited access to the community, and there is police involvement or hospitalizations required.

- Outcomes that are to be assessed – Incident reports - Appendix IVs / direct observation ABC analysis / behavior implementation ratings – rating scales / FBA forms and process / Changes to the behavior plan based upon data.

#### Clinical Opinion:

Provide the rationale for Tier assignments - The rationale should clearly describe the behavioral strengths and weaknesses (if appropriate) upon which the decision for Tier assignment is based and identify the recommended treatment strategies. Provide an analysis and summary of all the data on which the decision is based on.

Check the highest level of support indicated by the assessment:



This behavioral assessment was reviewed with the interdisciplinary team on (date) and the team agreed to implement the aforementioned strategy.

Team members present, as follows: (list all)

Signature of team leader:

Date of Signature:

Signature of behavior consultant:  
(Psychology Associate/LCPC/LCSW-C/LBA)

Date of Signature:

Signature Licensed Psychologist:

Date of Signature:

**Attachment Q. Weekly Behavior Respite Services Summary Report**

Consumer Name:

Respite Provider:

Region:

Admission Date:

Date of Nursing Assessment:

Follow up appointments recommended/made post assessment:

Resource Coordinator/Contact Information:

DDA Contact:

Provider/Caregiver:

Report Dates: From: \_\_\_\_\_ to \_\_\_\_\_

Name of person completing this form/contact information: \_

**Reason for Admission/Evidence of problem:**

**Target Behaviors:**

**Disruptive behavior:**

Progress on identified behavioral goals (include graphs and trend analysis for each target behavior, and data sheets) ATTACH:

**RAW DATA: Frequency of Events**

See Data sheet for antecedent to behaviors: Enclosed

Discharge progress/Coordination/Placement options being explored:

Other:	
Current medications	
Medication changes	
Behavior related to medication	
Medical issues	
Sleep pattern	
Psychiatrist	
Last psych appointment	
Next psych appointment	
Last team meeting	
Next team meeting	
Intake meeting date	
Intake meeting note distribution date	

Other:

See Data & Sleep Charts below:

Required Graphs:

Sleep:

Targeted Behavioral Frequencies:

Targeted Behaviors (Severity/Intensity Graph)-

**Attachment R. Behavior Assessment Request Form**

Name: \_\_\_\_\_

DOB: \_\_\_\_\_

Intake Date/Time: \_\_\_\_\_

Agency/Setting: \_\_\_\_\_

Resource Coordinator Name: \_\_\_\_\_

Region: \_\_\_\_\_

Staff requesting Behavioral Respite/phone/email:

\_\_\_\_\_

Projected requested time frame: \_\_\_\_\_

Has Team Meeting been held? \_\_\_\_\_

Have Team Meeting Minutes been sent to Regional Office?

\_\_\_\_\_

\_\_\_\_\_

Brief explanation of need for respite: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Desired outcome of respite (what's to be achieved during respite):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Projected Discharge Date: \_\_\_\_\_

Projected Discharge Site: \_\_\_\_\_

For DDA Regional Office Use Only (Signature of Regional Office Representative)

Approved: \_\_\_\_\_ Denied: \_\_\_\_\_

Details of Decision:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Appendix 1. – Abbreviations and Definitions

For purposes of this RFP, the following abbreviations or terms have the meanings indicated below:

1. **ADL** - Activities of Daily Living
2. **Activities of Daily Living** – A series of basic activities performed by individuals on a daily basis necessary for independent living at home or in the community.
3. **BA** - Behavior Assessment
4. **Behavior Assessment** – Identifies or confirms an individual's challenging behaviors and identifies any co-occurring mental health issues that cause those behaviors, by collecting and reviewing relevant data, discussing the information with the individual's support team, and developing the Behavior Plan that best address the function of the behavior, if needed. A behavioral assessment is performed by a qualified clinician
5. **BC** - Behavioral Consultants
6. **Behavioral Consultants** – Master's Degree Level Psychology Associates (PA) under the supervision of a Maryland Licensed Psychologist, Licensed Certified Social Worker, Licensed Professional Counselor, or Licensed Behavior Analyst, who must be licensed as provided by COMAR 10.05 and whose responsibility it is to design, implement and train agency staff on highly specific positive behavior support plans to reduce inappropriate behavior while enhancing adaptive skills to replace problematic behavior.
7. **BCS** - Behavioral Consultation Services
8. **Behavioral Consultation Services** – Behavioral Consultation Services oversees and monitors the implementation of recommendations developed under the Behavior Assessment as indicated in the Behaviors Plan
9. **BP** - Behavioral Plan
10. **Behavior Plan** – A plan that is based on the results of a functional behavioral assessment (FBA) which includes a description of the problem behavior, along with a specific reason for the problem behavior. This is done in a person centered, trauma informed manner using positive behavioral support methods.
11. **BR - Behavioral Respite** – Transferring an individual who is currently receiving DDA services from their current living environment to a more highly structured and positive environment for a time-limited period where their challenging behavior(s) can be managed in a positive, safe, and effective manner. Also, a shortened version of Behavioral Respite Services.
12. **BRS - Behavioral Respite Services** – Relief services provided by a community residential licensee to meet an individual's behavioral needs.
13. **Behavioral Respite Services Billable Interval** – A billable interval of Behavioral Respite is when a person has received services for at least 6 hours in an approved Behavioral Respite setting. Anything less than 6 hours in an approved Behavioral Respite setting or any duration in a non-approved Behavioral Respite setting is not billable.
14. **BSS - Behavior Support Services** – An array of services to assist participants who without such supports are experiencing or are likely to experience difficulty in community living as a result of behavioral, social, or emotional issues. These services help understand an individual's



challenging behavior and what need it is communicating in order to develop a Behavior Plan to enhance the individual's independence and inclusion in his/her community.

15. **Behavioral Tech** - Paraprofessional that is able to implement Behavior Plans or other recommended levels of support (Tier 1, Tier 2 or Tier 3), record behaviors and provide a safe and supportive environment.
16. **Business Day(s)** – The official working days of the week to include Monday through Friday. Official working days excluding State Holidays (see definition of “Normal State Business Hours” below).
17. **Clinical and Professional Staff** – Any employees or agents of the Contractor or any subcontractor that is required by law, regulation, or the RFP to have either a Master's or Doctorate degree, and/or any type of license or certification from either an agency of the State of Maryland or a national professional certifying entity.
18. **COMAR** – Code of Maryland Regulations available on-line at: <http://www.dsd.state.md.us/COMAR/ComarHome.html>.
19. **Contract** – The Contract awarded to the successful Offeror pursuant to this RFP. The Contract will be in the form of **Attachment M**.
20. **Contract Commencement** - The date the Contract is signed by the Department following any required approvals of the Contract, including approval by the Board of Public Works, if such approval is required.
21. **Contract Monitor** – The State representative for this Contract who is primarily responsible for Contract administration functions, including issuing written direction, invoice approval, monitoring this Contract to ensure compliance with the terms and conditions of the Contract, monitoring MBE and VSBE compliance, and achieving completion of the Contract on budget, on time, and within scope. The Contract Monitor may authorize in writing one or more State representatives to act on behalf of the Contract Monitor in the performance of the Contract Monitor's responsibilities. Department may change the Contract Monitor at any time by written notice to the Contractor.
22. **CO - Contract Officer** – The Office of Procurement and Support Services (OPASS) designated individual assigned to facilitate the procurement process. The Procurement Officer may designate the Contract Officer to conduct components of the procurement on behalf of the Procurement Officer. The Contract Officer for this RFP is identified in the Key Information Summary Sheet
23. **Contractor** – The selected Offeror that is awarded a Contract by the State.
24. **Contractor Contract Manager** – The Contractor employee who will be responsible for the proper performance of the Contract by the Contractor and its employees and agents. This position must serve as the primary point of contact between the Department Contract Monitor and the Contractor and is to be primarily responsible for the operational aspects of the Contract from the Contractor's perspective.

The individual who performs this function must also provide clinical supervision for all clinical Staff. Accordingly, this individual must be a Licensed Psychologist, Licensed Certified Social Worker, or Licensed Professional Counselor as provided by COMAR 10.22.

This position is designated as a Key Personnel and is subject to the provisions of Section 3.11.

22. **Contractor Personnel** – Employees and agents and subcontractor employees and agents performing work at the direction of the Contractor under the terms of the Contract awarded from this RFP.
23. **CCS - Coordinator of Community Services** – Case managers for the DDA’s Community Pathways Waiver. DDA's Coordination of Community Services assist individuals with intellectual/developmental disabilities and their families in learning and gaining access to resources in their community, planning for their future, and accessing needed services and supports. A CCS assists individuals with developing a Person-Centered Plan (PCP).
24. **Crisis Behavioral Assessment** – A Behavioral Assessment that is conducted by mobile crisis intervention services within 24 hours of initial contact to assess the severity of behaviors and threat of harm to person in crisis or those around them as well as give recommendations for short and long term interventions to assist with the resolution of identified challenges. Each Crisis Behavioral Assessment must be signed by the preparer of the Assessment and by that person’s supervisor.
25. **Data Breach** – The unauthorized acquisition, use, modification or disclosure of State data, or other Sensitive Data.
26. **Department or MDH** – Maryland Department of Health
27. **eMM** – eMaryland Marketplace (see RFP **Section 4.2**).
28. **Fade-out (Fading) Plan** – A gradual process that gives the individual time to adjust to the changes in supervision and enables the individual to experience the success they are achieving. The plan needs to be described in a step by step fashion that ends up with 1:1 or 2:1 supervision being discontinued.
29. **Go-Live Date** – The date, as specified in the Notice to Proceed, when the Contractor must begin providing all services required by this solicitation.
30. **Individual Planning Team** – A team that is comprised of the person being served, friends, family members, staff and advocates with the goal of developing and individualized, person centered plan for that person.
31. **Key Personnel** – All personnel identified in the solicitation as such, or personnel identified by the Offeror in its Proposal that are essential to the work being performed under the Contract. See RFP Sections 3.10 and 5.3.2.G.
32. **Local Time** – Time in the Eastern Time Zone as observed by the State of Maryland. Unless otherwise specified, all stated times shall be Local Time, even if not expressly designated as such.
33. **Mandt System** – A comprehensive integrated approach to preventing, de-escalating, and if necessary, intervening when the behavior of an individual poses a threat of harm to themselves and/or others, which is the DDA approved behavior support system (Reference: <http://www.mandtsystem.com>).
34. **MDH** – Maryland Department of Health.
35. **MD START – Maryland Systemic-Therapeutic – Assessment -Resources- and Treatment (START)**. A community based proprietary care crisis intervention system that DDA will be piloting in July 2019.

36. **Minority Business Enterprise (MBE)** – Any legal entity certified as defined at COMAR 21.01.02.01B (54) which is certified by the Maryland Department of Transportation under COMAR 21.11.03.
37. **MCIS - Mobile Crisis Intervention Services**
38. **Mobile Crisis Intervention Services** – A response to a behavioral, acute psychiatric or situational emergency that may result or has resulted in a harmful or potentially harmful outcome to an individual.
39. **Non-Behavior Respite** – Respite services that are requested for reasons other than extreme behavioral issues.
40. **Normal State Business Hours** – Normal State business hours are 8:00 a.m. – 5:00 p.m. Monday through Friday except State Holidays, which can be found at: [www.dbm.maryland.gov](http://www.dbm.maryland.gov) – keyword: State Holidays.
41. **NTP - Notice to Proceed** – A written notice from the Procurement Officer that work under the Contract, project, Task Order or Work Order (as applicable) is to begin as of a specified date. The NTP Date is the start date of work under the Contract, project, Task Order or Work Order. Additional NTPs may be issued by either the Procurement Officer or the Contract Monitor regarding the start date for any service included within this solicitation with a delayed or non-specified implementation date.
42. **NTP Date** – The date specified in a NTP for work on Contract, project, Task Order or Work Order to begin.
43. **Offeror** – An entity that submits a Proposal in response to this RFP.
44. **PA - Psychology Associate**
45. **PCP - Personal-Centered Plan** – Person-centered planning is a set of approaches designed to assist someone to plan their life and supports. It is used most often as a life planning model to enable individuals with disabilities or otherwise requiring support to increase their personal self-determination and improve their own independence. The Person-Centered Plan is the outcome of this person-centered planning effort.
46. **PII - Personally Identifiable Information** – Any information about an individual maintained by the State, including (1) any information that can be used to distinguish or trace an individual identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.
47. **Positive Behavior Support** – is a set of research-based strategies used to increase quality of life and decrease problem behavior by teaching new skills and making changes in the person's environment.
48. **Procurement Coordinator** – The State representative designated by the Procurement Officer to perform certain duties related to this solicitation which are expressly set forth herein. The Procurement Coordinator for this RFP is identified in the Key Information Summary Sheet.
49. **Procurement Officer** – Prior to the award of any Contract, the sole point of contact in the State for purposes of this solicitation. After Contract award, the Procurement Officer has responsibilities as detailed in the Contract (**Attachment M**), and is the only State representative who can authorize changes to the Contract. The Department may change the Procurement Officer at any time by written notice to the Contractor.

50. **Proposal** – As appropriate, either or both of the Offeror’s Technical or Financial Proposal.
51. **PHI** - Protected Health Information
52. **Protected Health Information** – Information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
53. **Psychology Associate** – A professional position that requires a master’s degree in psychology, a period of supervision by a higher level professional and passing a standardized examination.
54. **Region** Four sets of contiguous political jurisdictions and geographic areas within Maryland that for efficiency in dealing with Developmentally Disabled Individuals are administered by separate DDA (Regional) offices. The four DDA Regions are as follows:
  - a. Central Maryland Region (CMR) - includes Baltimore City and Anne Arundel, Baltimore, Harford, and Howard Counties.
  - b. Eastern Shore Region (ESR) - includes Caroline, Cecil, Dorchester, Kent, Queen Anne’s, Somerset, Talbot, Wicomico, and Worcester Counties.
  - c. Southern Maryland Region (SMR) - includes Calvert, Charles, Montgomery, Prince George’s, and St. Mary’s Counties.
  - d. Western Maryland Region (WMR) - includes Allegany, Carroll, Frederick, Garrett, and Washington Counties.
55. **RFP - Request for Proposals** – This Request for Proposals issued by the Department, with the Solicitation Number and date of issuance indicated in the Key Information Summary Sheet, including any amendments thereto.
56. **Start-up Period** – The period of time, if any, between Contract Commencement (see Definition) and the Contract Go-Live Date (see Definition). During any Start-up Period the Contractor is to undertake whatever actions are needed to begin the successful performance of the Contract as of the Go-Live Date. Unless special Start-up pricing is requested in Attachment B, the Financial Proposal Form, there will be no payment made to the Contractor for any Start-up activities.
57. **Security or Security Measures** – The technology, policy and procedures that a) protects and b) controls access to networks, systems, and data.
58. **State** – The State of Maryland.
59. **State Residential Centers** – Two State owned and administered facilities that provide services to individuals with intellectual disability: the Potomac Center in Hagerstown, Maryland and the Holly Center in Salisbury, Maryland.
60. **Step-Down** – A gradual process of reducing staffing ratios and/or other support activities for an individual receiving BRS as that individual evidences a reduction in challenging behavior. Step-Down is largely the same as the defined terms of Fading or Fade-out.
61. **Total Proposal Price** – The Offeror’s total price for goods and services in response to this solicitation, included in Financial Proposal **Attachment B** – Financial Proposal Form.
62. **Trauma Informed Care** – An organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of trauma on individuals.

63. **Veteran-owned Small Business Enterprise (VSBE)** – A business that is verified by the Center for Verification and Evaluation (CVE) of the United States Department of Veterans Affairs as a veteran-owned small business. See Code of Maryland Regulations (COMAR) 21.11.13.

## **Appendix 2. – Offeror Information Sheet**

See link at [http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder\\_OfferorInformationSheet.pdf](http://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Appendix2-Bidder_OfferorInformationSheet.pdf).